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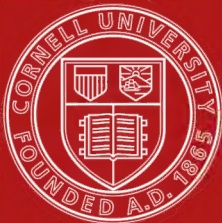
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# MINUTES AND TESTIMONY

OF THE

## Joint Legislative Committee

Appointed to Investigate the

# Public Service Commissions

(Authorized by Joint Resolution of January 21, 1915, and continued  
by Joint Resolution of April 24, 1915; further continued by  
Joint Resolution January 20, 1916, and March 6, 1916)

## VOLUME V

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TRANSMITTED TO THE LEGISLATURE MARCH 30, 1916

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# JOINT COMMITTEE OF THE LEGISLATURE

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## FROM THE SENATE

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*Chairman*

HON. ROBERT R. LAWSON,  
HON. JAMES E. TOWNER,  
HON. CHARLES J. HEWITT,  
HON. JAMES A. FOLEY.

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HON. FREDERICK S. BURR,  
HON. CHARLES D. DONOHUE.

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## COUNSEL TO THE COMMITTEE

HON. MERTON E. LEWIS,  
*Deputy Attorney-General*

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Committee organized at the Hotel Biltmore, New York, on  
June 24, 1915.





# CONTENTS

## HEARINGS — VOL. V

	PAGE	1916.	PAGE
1916.			
May 18. Evening (ex.) session	1	June 2. Morning session.....	540
Afternoon session....	23	Afternoon session....	566
May 19. Morning session.....	27	June 3. Morning session.....	605
Executive session....	30	June 5. Morning session.....	605
Executive (2d) ses....	52	Afternoon session....	619
Afternoon session....	85	June 6. Morning session.....	661
May 22. Morning session.....	131	Afternoon session....	685
Afternoon session....	132	June 7. Morning session.....	707
Executive session....	145	Afternoon session....	732
May 23. Morning session.....	157	June 8. Morning session.....	758
Executive session....	160	Afternoon session....	791
Afternoon session....	171	June 9. Morning session.....	828
Executive (2d) ses....	192	Afternoon session....	864
May 24. Executive session....	209	June 12. Morning session.....	921
Afternoon (ex.) ses..	219	Afternoon session....	943
May 25. Morning session.....	258	Executive session....	976
Afternoon session....	271	June 13. Morning session.....	988
May 26. Morning session.....	316	Afternoon session....	1011
Afternoon session....	351	June 14. Morning session.....	1058
May 31. Morning session.....	401	Afternoon session....	1094
Afternoon session....	431	June 15. Morning session.....	1144
June 1. Morning session.....	472	Afternoon session....	1165
Afternoon session....	502	June 16. Morning session.....	1232
		Afternoon session....	1252

## WITNESSES — VOL. V

	PAGE		PAGE
Abel, Mr. ....	988, 1094	Dunigan, Senator.....	939
Auerbach, Jos. S.....	472	Dunn, Monsignor J. J....	260, 271
Bell, Howard A.....	917	Egan, Martin .....	219
Belmont, August .....	606	Ernest, Roy H.....	1261
Bennington, Mr. ....	893	Farrell, Rev. Wm. B.....	288
Blaha, Adolph .....	394	Federspiel, Mortimer A...1252,	1288
Brady, Peter, J.....	696, 944, 974, 1058	Ferris, Wm. J., Jr.....	1295
Bullock, Mr.....	1118	Gillespie, T. A.....	553, 582
Cedarstrom, Mr.....	421, 782, 791	Halm, Wm. E.....	431
	858, 864, 903, 954	Hardy, Mr. ....	3
Codley, Leon C.....	1059	Harkness, Mr. ....	416, 435, 736
Coley, Mr. ....	81, 85	Higgins, Dr. J. J. ....	306
Cook, Sheldon, N. ....	1288	Higgs, Wm. H. ....	1299
Craven, Alfred .....	620, 1083	Hills, Wm., Jr.....	41
Deevy, Wm. J.....	206	Hotchkiss, Chas. E. ....	422
Dempsey, John J. ....	1077	Hoyt, Gerald L.....	23
DeWitt, Mr. ....	64	Hunter, Henry T. ....	858
Dickenson, Wm. A. .1252, 1276,	1280	Jackson, Harry M. ....	160
Dickinson, Chas. E. ....	1283	Kalb, Chas. W. ....	122
Dineen, Rev. Jos. P. ....	300	Kent, Henry R. ....	540
Drummond, Walter, J. ....	316	Landstreet, Mr. ....	451

	PAGE		PAGE
Lord, Frank A. ....	192	Smith, Bartlett .....	82, 87
Mayo, Henry W. ....	921	Sprague, Frank J. ....	661
McCoy, Ira. ....	1296	Stewart, Jas. A. ....	132
Mitchel, Mayor .....	171, 225	Sullivan, Francis DeC. ....	450
Miles, Mr. ....	656		451, 475, 502
Morgan, J. P. ....	1144	Sulzer, Mr. ....	71
Mortimer, Geo. T. ....	129	Swan, Judge .....	5
Name, Calvin D. ....	156, 157	Tomkins, Calvin .....	756
Phillips, Ozro B. ....	30, 45	Tully, Alfred .....	225
Potter, Dr. Daniel C. .309, 320,	986	Turner, Daniel L. ....	687
Reynolds, D. Albert. ....	145	Turner, Jos. A. ....	1292
Reynolds, William H. ....	587	Vanderbilt, Mr. ....	540, 567
Saltzman, Saul .....	685	Weller, R. K. ....	348
Schermerhorn, Avery .....	898	Weber, Dr. Adna. .692, 699, 707,	744
Seaman, Henry B. ....	401	Whitney, Travis H. ....	830
Seymour, Mr. ....	11	Williams, T. S. ....	778, 1037
Seymour, Chas. ....	76	Woods, Arthur .....	98, 209, 224
Seymour, Frederick, ...62, 70,	76	Yeomans, Mr. ....	774, 797
Skitt, Alfred .....	25	Yunge, Geo. ....	351



# INDEX OF DOCUMENTS, MEMORANDA, ETC.—VOL. V

<i>Nature of Exhibit</i>	PAGE
Announcement of Chairman Thompson in connection with telephone wire tapping ..... 1, 27,	96
Exhibit No. 1, May 19, 1916, signature of O. B. Phillips.....	34
Letter to O. B. Phillips from Humboldt Fibre Co.....	56
Letter to Mr. Jarrell, February 4, 1916, signed O. B. Phillips.....	59
Cablegram from French Minister of Finance to J. P. Morgan Co.....	60
Exhibit No. 1, May 22, 1916, blank used by listening-in operators of telephone company .....	137
Exhibit No. 2, May 22, 1916, "Estimated Cost of power," etc., Interborough R. T. Co.....	140
Letter signed H. S. Musten to Mr. MacDowell.....	147
Letter to Chairman Thompson from John M. Bowers.....	169
Affidavit of Rt. Rev. Dennis J. McMahon at Carlsbad, Austria.....	333
Letter to Mornay Williams, June 7, 1915, from Wm. A. Prendergast, Comptroller .....	335
Letter of Dr. Porter to Mayor Mitchel.....	641
Letter of Mayor Mitchel, May 26, 1916, regard to Hotel Irving.....	377
Extract from letter of Aug. 31, 1915, from Com. of Docks to Col. Hayward	441
Statement of New York Dock Co.....	443
Communication Dec. 1 from New York Dock Co. to Public Service Commission .....	444
Extract of Willcox's letter to Mayor, dated July 7th.....	463
Letter of Com. Willcox, June 10, 1910, to Mayor Gaynor.....	478
Extracts from speeches of Mayor Gaynor, Oct. 14, 1909.....	484
Extracts from letter of Com. Willcox to Mayor Gaynor.....	488
Letter from C. Augustus Haviland to Mayor Gaynor, July 9, 1911....	493
Letter of Mayor Gaynor to People of New York, dated July 19, 1911....	494
Report of majority of Rapid Transit Com. to Board of Estimate.....	502
Extract from brief of Guthrie & Quackenbush filed with Board of Estimate .....	509
Extract from brief of John M. Bowers on behalf of Third Ave. Ry.....	518
Opinion of McDonald, contractor, by Judge Van Sicken.....	613
Opinion of Appellate Division <i>in re</i> subway.....	614
Report of A. R. Blanchard, expert, to Alfred Craven, Chief Engineer Public Service Commission .....	622, 633
Memorandum of Mr. Hills, Feb. 4, 1916, concerning stone for ballast..	632, 637
Letter of George Gibbs, Consulting Engineer to Alfred Craven, Chief Engineer Public Service Commission.....	641
Correspondence between A. Craven, Chief Engineer Public Service Commission, and W. S. Menden, Chief Engineer N. Y. Municipal Ry.....	650
Letter from George S. Pegram to A. Craven.....	654
Memorandum by Henry B. Seaman.....	660
Extract from letter of Nov. 11, 1910, from F. J. Sprague to Public Service Commission <i>in re</i> subway.....	661
Letters to Chairman Willcox, Public Service Commission, from T. J. Sprague, dated Jan. 26, 1911.....	667, 673, 676
Extracts from bills of railway companies approved by Dr. Adna Weber .....	694, 704
Letter to Chairman Thompson, June 6, 1916, from Peter J. Brady.....	696
Extract from Contract No. 4, lessees' expenses for superintendence.....	711, 715
Extract from letter of N. Y. Municipal Ry. Co. to Public Service Commission .....	717

	PAGE
Memorandum for Mr. Craven relating to interest on contracts.....	728, 743
Letter of Sept. 15, 1915, from A. Craven to Public Service Commission..	761
Letter of Feb. 3, 1916, to Public Service Commission from T. S. Williams	762
Report from Cedarstrom, Real Estate Expert, to T. H. Whitney, Secretary Public Service Commission, of Feb. 14, 1916 — Gravesend Ave. El. Line	767
Memorandum of Sverre Dahm to Mr. Yeomans, Sept. 14, 1915.....	775
Minutes of Public Service Commission, <i>in re</i> 38th St. cut.....	783
Letter to T. H. Whitney, Secretary, Nov. 13, 1914, from Cedarstrom....	785
Memorandum of Mr. Harkness, June 8, 1915.....	819
Extracts of interview with T. H. Whitney, Public Service Commissioner, in New York World.....	830
Extracts Public Service Commission Minutes of April 30, 1914.....	913
Letter from P. J. Brady to Chairman Thompson, June 12, 1916.....	944
Letter from Compt. Prendergast to Counsel Invest. Com. ....	960
Agreement between B. R. T. and Central Trust Co.....	994
Letter from P. J. Brady to Chairman Thompson.....	1018
Memorandum submitted by Albert Rathbone, Counsel of Central Trust Co., to Public Service Commission.....	1024
Letter of T. S. Williams, Dec. 10, 1912, to Thomas E. Clark, President Allied Civic Bodies .....	1037
Letter to Hon. Frank Moss, Counsel, complaint as to transportation facilities .....	1077
Letter to Public Service Commission complaining of B. R. T. ....	1080
Extract from "Money and Investments".....	1101
Extract from "The Accountancy of Investment".....	1108
Letter of T. P. Shonts, Mar. 11, 1910, to J. P. Morgan.....	1172
Letter of T. P. Shonts, Nov. 30, 1910, to Mr. Davidson.....	1174
Letter of J. P. Morgan to T. P. Shonts.....	1176
Letter of Mr. Pepperman to J. P. Morgan.....	1176
Extract from Minutes Board of Directors, Interborough Ry., of Nov. 29, 1911 .....	1182
Statement of Interborough Rapid Transit balances.....	1191
Schedules 1, 2, 2A, 3 — Interborough R. T. bonds.....	1195
Extract from records of Public Service Commission, <i>in re</i> ....	1234, 1239, 1249
Resolution Common Council, Lockport, June 30, 1913.....	1236
Extracts from files of Commissioner Decker, <i>in re</i> Lockport Gas & Elec. Light Co. ....	1237
Exhibit No. 3, Lockport Light, Heat & Power Co.....	1268
Letter to Hon. Roy H. Ernest, Sept. 22, 1915, from McClellan and Champion .....	1269
Correspondence <i>in re</i> Lockport Case.....	1273, 1274
Pamphlet of Bertron, Griscom & Jenks of New York.....	1279
Minutes of Board of Trade, Lockport, June 18, 1913.....	1280

## TESTIMONY

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MAY 18, 1916

### EXECUTIVE SESSION OF THE THOMPSON INVESTIGATING COMMITTEE.

Thursday evening, May 18, 1916.

Present.—Mr. McQuiston, Mr. Frederick Seymour, Mr. Perley Morse, Mr. Lamar Hardy, Commissioner Woods, Mr. Smith, Mr. Schuster, Mr. Feinberg, Mr. Frank Moss, Senator Thompson.

Senator Thompson.—Well, now, gentlemen, we asked you to come up here at the suggestion of, I think, the Mayor and Commissioner Woods and it is for the enlightenment of this Committee in relation to this Seymour matter which the public press have carried. It seems from what came before this Committee, Mr. Swayze of New York Telephone Company went on the stand yesterday and testified that there had been approximately three hundred and fifty taps made of the telephone wires in this city at the request of the police department in the last two years and that those were made on a blank form which was filled out and signed by some member of the police department who had that in charge and was countersigned by Mr. Woods, Commissioner of Police, and upon that the telephone company always acted and transferred the wire over to a police wire and had the conversation reported.

While this was being taken, Mr. Seymour came before the Committee and it seems that the fact has been published, perhaps not in as large a way as it was last night and this morning, but it was published two or three weeks ago that wires had been tapped. And Mr. Seymour went on the stand and made a statement in relation to the thing that he understood through Val O'Farrell that he had been told that a dictagraph had been placed in his premises and that Detective Burns looked through his papers and that he never had known he had been tapped and then he came to us and wanted to know what the reason was that they were tapped. He said he was interested in the munitions contract of the Allies and something was said about Mr. Morgan.

Whether it was on Mr. Moss' questions or on his statement, I don't know, but he said that afterwards Mr. J. P. Morgan was interested in their contract.

Mr. Moss.—The elder Mr. Seymour gave those details.

Senator Thompson.—Of course now, Commissioner Woods called me up this morning and asked me for an opportunity to come before this Committee and he came at 11 o'clock. Now, this is an executive session and I am going to state here that I assume that the U. S. government has in some way prevented it from the opportunity to tap telephone wires. I am also going to assume that the publicity to that fact is not to be desired from the standpoint of the government, because it might be construed in different ways in different countries that might possibly cause international competition and this will stop and we don't desire to get into that field. Now, when this list of telephone taps was delivered, I asked Mr. Swayze in print, if on the list there were any taps that were in anywise used by or for the benefit of the government and I was advised that they were not and I was also advised from Washington that if this Committee limited its investigations to the mayor and the commissioner of police in the city of New York, that we would not be able to harm the government any and so, relying upon that information, why I let them go and now the commissioner states this morning, that he wanted to go on the stand and say that this tap was made in the first place because a complaint was made by J. P. Morgan & Co., that their messages were being interfered with and they found that in the offices of Seymour & Seymour, someone who pretended to be interested in purchasing munitions for the Russian government when in reality that was only a guise of munitions being purchased to be sent to Mexico to U. S. troops.

Commissioner Woods.—The office was called The Western Cartridge Company and the man was outside that company. He was trying to get munitions from him to get to Mexico, but the general agent was not in the Seymour office.

Senator Thompson.—Of course, I felt to have that statement made by this Committee after we had undertaken to protect the government was unfair to the government and I told the police commissioner that he could go on the stand and he could make

any statement that he wanted to make that he thought would justify him, but he must leave that out. He did not want to leave that out. That is the way it has been all day. He wanted to put in that statement and I wanted it left out. And now the day is almost gone. I want the commissioner to be justified because I like him and I want the mayor to be justified and the district attorney to be justified and everybody, but at the same time I am going to assume without any proof before this Committee that whatever the United States government sees fit to do, it is justified in doing it. Now, that is the way this Committee feels about it. So that if this thing can be cleared or I can make a statement about it, all right. Now, Mr. Swayze showed me the original applications for taps of this wire within the last two years for the police department in New York, but I have not any copy. I sent for a copy and he said he would have a copy the first thing in the morning and we have not gotten it yet and I thought we could go through that and find out what is behind all these men. So far we are left to the same thing and they suggested that we send for Mr. Swann and I told him we would be glad to have the commissioner and the mayor here and Mr. Hardy, so they are all here and I told Mr. Hardy so far as we were concerned he could ask Judge Swann whatever he wanted to. I don't know how you feel.

Judge Swann.—I am very happy to tell you anything I know.

Mr. Hardy.—Senator, I think you had better tell the judge the attitude of the mayor about this. He thought there ought to be some answer to this implication made against the Commission and it ought to be made very promptly. The Commission wanted to be heard on the stand because the unfortunate testimony about Mr. Seymour came out yesterday. We had suggested to the senator that all these facts had been placed before him about this matter and he could then come out and say that he had made an examination of this matter and that he felt that Commissioner Woods was justified in tapping this wire, something to that effect, and then that could be done in the executive session and it would not affect the national session which would be involved.

Mr. Moss.—I would like Judge Swann to know the position of things as I feel. I express my mind to the Chairman, first,



upon the question of justification. I advised the Chairman that I did not think he was called upon to justify the police department in what they had done, that is, using so broad a term as that. That the whole matter was under consideration, there might be questions of law in it and certainly there are questions of public opinion in it and it was not necessary, nor was it advisable that the Chairman should take any position or the Committee should take any position going so far as justification. A statement that it was obvious to the Committee that the police commissioner was actuated only by motives of public good in whatever he did would be a fair statement. Then as to the case itself, for this Committee to assume a position one way or the other upon a short examination such as we could make here might bear unduly upon one side or the other of this problem. It would not do to declare anything based upon the proposition that crime was committed in that office or being committed about that office, because it would usurp the power of the criminal court and we might be doing an injustice to some individual. In fact, our interest is in the Telephone Company and in the president of the company and might ultimately lead to the Legislature for the effecting of law, a situation which to most people was unknown, so I have hesitated to advise the Committee to go so far as to make a justification or so far as to make a statement that would express an opinion by this Committee upon the criminality or the lack of criminality of these persons. I think Judge Swan is now in possession of the two positions that are before the Committee.

Judge Swann.— I think I am, yes.

Senator Thompson.— Well, Judge, is there anything that you want to state to us here in relation to the matter? Or do you desire to advise the Committee in relation to the matter?

Judge Swann.— Anything you would like to know that I am possessed of, you can have.

Mr. Hardy.— Senator, I am not here in the position of interrogating Judge Swann. I understood this was an executive meeting so that you could make up your mind whether you wanted to make any statement.

Senator Thompson.—I don't force anybody to make a statement.

Mr. Hardy.—I am not in possession of any information concerning what information Judge Swann has about this matter.

Senator Thompson.—I want to be frank here. Now, I don't believe I have a single interest in it at all and I have no political interest in it. This thing can't possibly touch my district and I shall not be running for any office that would attract the electorate outside of it. I only want to do the right thing and what I think is that Senator Wadsworth, a Republican, did talk to me at the request of the State department.

Mr. Moss.—The attitude of the gentlemen has been that no harm had been done to anybody by taking time in this matter and know where we are, to make no mistake and it has rather been against the proposition that he should be hurried into any statement which might turn out to be premature and unfair.

Senator Thompson.—I even sent Mr. Moss to confer with you so as not to embarrass the district attorney.

Mr. Moss.—I had Mr. Seymour call up the district attorney.

Judge Swan.—I can tell you all that I know in regard to it in five minutes.

Senator Thompson.—If you think it is wise to tell it.

Judge Swann.—Yes, you are in executive session and the secrets of the country are safe in your care, I am sure. Your representative of the Legislature and the policies of State are opposed in the Legislature. I can show you in a case in the United States Supreme Court where that phrase is used. About a month ago a rival detective agency to the W. J. Burns Detective Agency came to see me and said that they had evidence that W. J. Burns and his son, Sherman Burns, had tapped wires, telephone wires, and had put in a dictaphone in the office of Seymour & Seymour, 120 Broadway, and they offered to deliver the witnesses at my office which I was very glad to receive and when the witnesses came they testified before me about as follows:

They said that about sometime during the past winter that W. J. Burns and his son, Sherman Burns, had rented an office next to Seymour & Seymour at 120 Broadway, and that they ——

Mr. Moss.— On the same floor?

Judge Swann.— Immediately next door. They said that Stanchfield & Levy had an office on the other side of Seymour & Seymour, that one of the witnesses bored a hole through the wall and down at the base board and another one over the door, for the purpose of getting a wire in there to put in a dictaphone. They said that Burns himself had gone into the office and adjusted the dictaphone and put in the wires and they said the dictaphone had been placed behind the bookcase.

They said that Burns would go at night, he and his son, and rummage over the letters and correspondence of that day in the office of Seymour & Seymour and then they would take parts of that correspondence into this room they had hired and dictate the copies of those letters to two stenographers that they had there, that this kept up for a period of about two months and in the meantime I believe one of these witnesses had been arrested upon the complaint of Burns and extradition papers had been from Chicago for him upon complaint for an offense which he had committed five years before and it was that really that inspired his giving me this information about Burns.

They asked me to get in connection with Mr. Seymour and I immediately did. Before they left the room I telephoned to Seymour & Seymour and Mr. Seymour came up and then I told him that there were the witnesses and this is what they said and then I told Mr. Seymour practically what I have told you. Seymour said that there had been no dictaphone placed in the office and that it was all a fake. I said, "Now, here is the man who says he put it there." "Well," he said, "I don't believe it." I then sent for Burns. Burns said yes, he did put it there and he listened to the dictaphone, that he did not tap the telephone wires, that this was done by the police department. That he had nothing to do with that. That he did not listen over the telephone wires.

I asked him whose complaint it was and he said it was J. P. Morgan & Company's, and I asked him why and he said that a clerk in the employ of J. P. Morgan & Company was selling the secrets of J. P. Morgan & Company's clients to Seymour & Seymour and their clients, and that he had seen letters written on Seymour & Seymour's paper copying cablegrams from France,

from the Minister of Finance to J. P. Morgan & Company. I afterwards saw one of those letters myself on the paper of Seymour & Seymour, in which the cablegram, translated from the code into English, and the name of one of the conspirators, or alleged conspirators, that Burns was trying to get evidence concerning.

This cablegram was in regard to war munitions. One of the defendants was under indictment already in the district attorney's office and his case will be tried Monday. It is a man by the name of Sultzter, I think. Now, his case comes up on Monday for trial for forgery and larceny.

Mr. McQuiston.— From whose office?

Judge Swann.— Larceny from a note, in connection with J. P. Morgan or note in connection with anything they were investigating in this matter. He was merely one of the conspirators in the office of Seymour & Seymour and, when I say conspirators, I mean that is what the charge has been before me. The matter he had been indicted to subsequent to that was prior to that and he was waiting his trial in the regular course. He is on bail. I don't know but it was a year old. Anyway, I got sufficient documentary evidence placed before me on the paper of Seymour & Seymour and also the original cablegram from France to J. P. Morgan & Company and received in the office of J. P. Morgan and two days before the letter on the letter paper of Seymour & Seymour, which contained a copy of the verbatim of that cablegram.

There were other matters that I have forgotten now, as it is a month ago, but there was sufficient to see that something was discovered in the office of Seymour & Seymour. So when I asked Seymour to go into the grand jury room and testify against Burns for trespassing on his premises, he said that he did not care to do it, that if I would inform him as to whom Burns represented he would like to get an indictment against the employers of Burns. I told him I thought we could accommodate him in that regard, I thought it was J. P. Morgan & Company, if he liked to indict them, but he did not seem to desire to put Morgan before the grand jury.

Now, I had him up here yesterday. I had asked him to come before you asked him to come here. I said that the doors of the grand jury room swung in to him and he could walk right in and make a charge against anybody he wanted in connection with the tapping of his wires or putting in of the dictaphone or the reading over of his correspondence. I had him up there yesterday but he said he did not care to go in. He said he had no complaint to make at present.

Mr. McQuiston.—Could not J. P. Morgan & Company find out who this clerk was?

Judge Swann.—No. Counsel tells me that they have not yet. Mr. John D. Lindsey is the counsellor. Mr. Lindsey informed me this morning that he was unable to find who the clerk in the office of J. P. Morgan is, who was selling this information.

Mr. Feinberg.—Is that the only evidence, just the one letter?

Judge Swann.—There are quite a few letters.

Mr. Feinberg.—How about the paper it is on?

Judge Swann.—It is on Seymour & Seymour's paper.

Mr. Feinberg.—They can easily get the paper.

Judge Swann.—Well, this is represented to me as having been sent to Morgan & Company by a very big firm to whom this letter was sent.

Mr. Feinberg.—There is no doubt about the question that it is a true copy of the cablegram, but there is a chance in times such as these that somebody might have planted something in Seymour & Seymour's office.

Judge Swann.—I presume in any offence there is always a possibility of a frame up, but my experience has been that that is so unusual and I should never look for a frame up to be executed or countenanced by J. P. Morgan & Company.

Mr. Feinberg.—I don't say so, but there may have been others than J. P. Morgan & Company interested.

Mr. Moss.—The individual who used the paper may have gotten it surreptitiously.

Judge Swann.—Burns told me the only way they knew of Seymour & Seymour was this, of following certain men they suspected and they finally followed them into Seymour & Seymour's office.

Mr. Moss.—Did this conspirator have desk room in Seymour's office?

Judge Swann.—No, they were clients of Seymour & Seymour.

Senator Thompson.—Did you read the correspondence, Judge?

Judge Swann.—I glanced at several of them.

Senator Thompson.—Was it in relation to the sale of munitions of the French government?

Judge Swann.—Yes.

Senator Thompson.—Was there any of the correspondence or anything that came before you in regard to the sale of munitions for any other purpose?

Judge Swann.—I can't remember now, I really did not pay very much attention to it, because they were unable to connect up the crime sufficiently to present it to the grand jury.

Senator Thompson.—The crime was on the complaint of the Detective Agency?

Judge Swann.—In other words they could not get what they wanted and their only link was their own employee. They would not get proof how those copies of cablegrams got into Seymour & Seymour's office.

Senator Thompson.—The complaint that was before you was made by the Farrell agency and that is the complaint you proceeded on?

Judge Swann.—Not by the agency, by individual members of it.

Senator Thompson.—They were in the employ of the Seymours?

Judge Swann.—I don't think so at all.

Senator Thompson.— They were acting on their own responsibility because they were competitors of Burns?

Judge Swann.—That is it. Burns had caused the arrest of a friend of theirs, Bidinger, and Bidinger was in their employ and told all of this to them and he was one of the men who had been employed by Burns in this very transaction and then had a falling out with Burns.

Mr. Feinberg.— Let me ask you — assuming that you know that J. P. Morgan & Company thought that their secrets were being stolen from them, would not you think it was justifiable for them to discover the criminals by tapping the wire?

Judge Swann.—The telephone wire?

Mr. Feinberg.—Yes. .

Judge Swann.— If they had evidence such as they submitted to me, assuming what you say, eliminating the question of a frame-up entirely, which I never would think of in connection with them, and I don't think we could assume it, it seems to me that if they had traced and followed these men as they say they did, directly and day after day into the offices of Seymour & Seymour and they found many letters on Seymour & Seymour's letter heads and signed by men they saw go in there and they had the dictaphone in there first and got this information and heard Seymour & Seymour conferring with them on these direct subjects and matters, it seems to me that they would be justified in reporting the matter to the police department or the district attorney and asking the police to tap the telephone wire.

Personally I don't see any objection to it under those circumstances and with the evidence which they claimed they had and which if not framed up and exhibited to me, would justify, if anything would justify it, tapping the wire. The district attorney's office, before January 1, has never asked the police department or the Telephone Company to tap any man's wire at any time, on any subject and never have done it.

Mr. Moss.— I may say that it is a practice that I did not know as district attorney and did not know as police commissioner. Never heard of it.

Senator Thompson.—I may say, as Chairman of this Committee, I never heard of it.

Commissioner Woods.—I am sorry to say I have.

Judge Swann.—There was a dictaphone in this office when I got there on January 1, nicely rigged up. I had that taken down and the wires ripped out.

Senator Thompson.—Does Seymour want to go before the grand jury or does he not?

Judge Swann.—I asked Mr. Seymour whether he had put it in writing whether he wanted to go before the grand jury and go against anybody, but he would not put it in writing. I tell you very frankly, that —

Mr. McQuiston.—I don't think Seymour ought to get a clean bill of health in this bill. If he wants to talk, let him talk before Judge Swan so that you will have somebody to check up on.

Mr. Morse.—I think it will have a moral effect only.

Judge Swann.—The men against whom a conspiracy charge was made by Morgan & Company were Frederick Seymour, O. B. Phillips and Mortmoran B. Sulzer, sometimes he writes it Mortimer B. Sulzer.

Mr. Moss.—Mr. Seymour, this is an informal hearing and the record that we are making is a private record. The district attorney has made a statement of how the matter came to his attention, first through the statement of Mr. Farrell and then later from your calls. We will be glad to have you make a statement, if you care to do so, how this matter came to your attention and what your desires are in the matter.

Mr. Seymour.—The matter first came to my attention through two employees of Val O'Farrell's Detective Agency who came into my office about the second or third of April in the afternoon in a very mysterious way. They said that there was a dictaphone in my private office and that my telephone wires were tapped and that it was done by the Burns Detective Agency.



It did not seem possible to me, but I turned them loose in my office and they were there for an hour or more without finding anything. They said to me that they did not want me to employ them at all, that it was a matter that they were doing of their own accord, that Burns had put over a job on them and that they were trying to get equal with them. They were quite open about that. They came back, two of them, the next day to look again. They did not find anything then.

I rather dismissed the matter from my mind until I found one day from the papers—I don't know whether I saw it in the papers first, or whether Judge Swan asked me to come to his office first—in all events they had been to the district attorney's office and had presented the matter there some two or three weeks later, I think it was. Now, that is all that I know about it.

Mr. Moss.—Well, have you any desire to present this matter to the grand jury?

Mr. Seymour.—Not unless I can get by these detective agencies to the people who hired them.

Mr. Moss.—Suppose you can get to the people who hired them?

Mr. Seymour.—I would like to make a complaint to the district attorney's office.

Mr. Moss.—Suppose that it is perfectly established that Burns was hired by J. P. Morgan & Company and that fact can be proved without any trouble to you, would you then like to make a complaint?

Mr. Seymour.—I would, to the government.

Mr. Moss.—I am going to ask you two or three questions, Mr. Seymour, of perhaps a searching character and I do it because of what may possibly be in the case. Is there any reason why you would fear making a complaint against J. P. Morgan & Company? Have you had any transactions or dealings which would make you hesitate to make a complaint against J. P.

Morgan and Company? I don't refer now to their importance or strength, but rather to matters that might have transpired.

Mr. Seymour.—There is nothing that has transpired that would make me hesitate on that, the only thing that would make me hesitate might be that it might affect adversely the business of clients of mine in the future.

Mr. Moss.—If you are willing to answer this question, I will put a very straight question to you, Mr. Seymour. Have you been engaged in any attempt to obtain, by purchase or otherwise, the secrets of J. P. Morgan & Company's office?

Mr. Seymour.—Never, in any way whatever.

Mr. Moss.—Are you aware of anything that has been done by anyone in your office to obtain those secrets?

Mr. Seymour.—I have no information of that kind at all.

Mr. Moss.—Have you any knowledge of there having been in your office any copies of cablegrams belonging to J. P. Morgan & Company?

Mr. Seymour.—I am sure that there have not been.

Mr. Moss.—Now, do you mean to say, Mr. Seymour, that your mind and your conscience is perfectly clear of any such matters as that?

Mr. Seymour.—Absolutely.

Mr. Moss.—And you would go into any proceedings such as have been mentioned without any fear on that score?

Mr. Seymour.—Absolutely.

Mr. Moss.—Now, it has been suggested, Mr. Seymour, I don't need to say by whom or how, but it has been suggested to us that there was somebody in the employ of J. P. Morgan & Company, having access to their correspondence and to their cablegrams concerning contracts for the sale of munitions of war and that somebody in their employ was selling this information and

selling it in or through your office. Now, you understand me, you are perfectly clear of anything of that kind?

Mr. Seymour.— Nothing of that sort whatever.

Mr. Moss.— Have you any unwillingness to state, in this private way, the nature of the business that you had in your office which might make it of advantage to J. P. Morgan & Company to find out what you were doing in your office?

Mr. Seymour.— I don't know of anything which would so affect J. P. Morgan & Company that they would care to listen. There were contracts and negotiations carried on there concerning munitions which were to be paid for by J. P. Morgan & Company. But they knew the whole details of those without trying to get any information.

Mr. Moss.— No, but as to whether J. P. Morgan & Company would have any reason for trying to get any information from your office?

Mr. Seymour.— Well, they were not involved in those contracts. I don't see how they would want to get any information from our office respecting those contracts.

Mr. Moss.— Now, somebody put the wires into your office, somebody put the dictaphone there and somebody caused your wires to be tapped. Have you any idea, any theory, as to the motive that anyone might have for doing that?

Mr. Seymour.— There might have been a motive in a different quarter which would account for it.

Mr. Moss.— In a different quarter?

Mr. Seymour.— Yes, but I can't account for the motive in J. P. Morgan & Company's case.

Mr. Moss.— Would the different quarter be a financial office?

Mr. Seymour.— Yes.

Mr. Moss.— Another financial office?

Mr. Seymour.— Yes.

Mr. Moss.—Now, I am going to ask you another straight question, Mr. Seymour. Have you any information as whether or not munitions of war passing through contracts in your office apparently designed for Russia, we will say, or France, were in reality to go to Mexico?

Mr. Seymour.—There were no such contracts for any governments.

Mr. Moss.—No such plans in operation?

Mr. Seymour.—No such plans of any sort.

Senator Thompson.—You said, “A different quarter.” What did you mean by that?

Mr. Seymour.—It was a different house, not Morgan & Company.

Senator Thompson.—What house?

Mr. Seymour.—I would rather not state that now, because I have not any definite proof.

Senator Thompson.—Your contracts, you say, were to be paid for by Morgan?

Mr. Seymour.—In other words, there were negotiations going on in my office for a month almost daily, in which a certain house would like to have had information as to our attitude as to how far they could get us in a compromising settlement.

Senator Thompson.—I had a little experience in one of these munition contracts and the contract in that case emanated from the French government. It had to come through Morgan & Company and a percentage was to be claimed there and then it had to come through somebody that I could not connect with and they had to keep a percentage and this required the making of one million cartridges, and there was to be made one million cartridges a day and I found that they were in Rochester and I went down and saw these people. I found that there was a concern here that we could not connect with Morgan & Company and

they seemed to be interested in that contract, but the thing had to go through Morgan & Company. Is that your situation?

Mr. Seymour.—No.

Mr. Moss.—You say it had to be paid for through Morgan & Company. Was that the condition all the while the matter was in your office?

Mr. Seymour.—Entirely so. It was a contract which Morgan & Company had let and we were sub-contractors.

Mr. Moss.—So that if these munitions were to be shipped anywhere else except France, why Morgan & Company must know where they were shipped.

Mr. Seymour.—Yes.

Mr. Moss.—Wherever these were shipped, Morgan & Company would have to know?

Mr. Seymour.—No question about that.

Mr. Moss.—Now, who are your clients in your office?

Mr. Seymour.—I don't think you ought to ask me that, do you?

Mr. Moss.—Did they have desk room in your office?

Mr. Seymour.—Not at all.

Mr. Moss.—Were they in and out of your office?

Mr. Seymour.—They came there frequently.

Mr. Moss.—Who occupies your office regularly?

Mr. Seymour.—Myself and my brother. Mr. Phillips and Mr. Hills have a room there.

Mr. Moss.—How long have they been there?

Mr. Seymour.—About a year, although they are not really connected with us at all.

Mr. Moss.—Who are they with?

Mr. Seymour.—They are doing business for their own account.

Mr. Moss.—Lawyers, are they?

Mr. Seymour.—Promoters.

Mr. Moss.—Did they not have any interest in this contract at all?

Mr. Seymour.—Not at all.

Mr. Moss.—Did they have any contracts of their own?

Mr. Seymour.—They have been doing war business as brokers.

Mr. Moss.—Is there any reason why their activities might be interesting to the police?

Mr. Seymour.—I don't think so, but I am sure they would be glad to come here if you would like to have them.

Mr. Moss.—Who are they?

Mr. Seymour.—Mr. O. Phillips and Mr. Wm. Hills, Jr.

Mr. Schuster.—Do you know who employed Mr. Burns' Agency?

Mr. Seymour.—No, I do not.

Judge Swann.—How about Sulzer, he comes in there occasionally.

Mr. Seymour.—What is his name?

Judge Swann.—It is Morton, I think. He signs it both ways, Mortmoran or Morton Sulzer. Which do you think is his right name?

Mr. Seymour.—I don't know him really.

Mr. Moss.—Now, do these men, Sulzer, Hills and Phillips, use your letter head paper?

Mr. Seymour.—No, they do not. I think they have used it occasionally but not frequently.

Judge Swann.— Suppose I tell him what I have read. I have read on your own letter head paper, letters signed by these men that I speak of, one or the other at different times on your letter heads, Seymour & Seymour, 120 Broadway, in which they had copies of cablegrams from the Minister of Finance of France in regard to munitions and copied them before, so I am told, J. P. Morgan & Company actually executed the orders, on your letter heads within say two days after they arrived in France, after they were dated in Paris, I don't know when they got there.

Now, do you know any reason why they would write on your letter head paper in regard to those munitions ordered by cable from J. P. Morgan & Company by France and how they got hold of that information.

Mr. Seymour.— I have not any idea how they got hold of it or where it came from.

Judge Swann.— So that you won't misunderstand what I have been told. I am told they traced these men to your office and that they had found letters from various munition manufacturers from them on your letter heads, giving them advance information, the munition factories, of orders which J. P. Morgan & Company were about to lay or to place. Do you understand what I mean? That is they were copied on your letter heads. That the various munition plants and munition sales agents, notifying them of these various orders that J. P. Morgan & Company had just gotten by cable from France and they were signed every time by either one or the other of those names that were given.

Mr. Feinberg.— Is that clear in your mind?

Mr. Seymour.— See if I understand it. That there were letters written on our letter heads, signed by either one of those men concerning orders for munitions which J. P. Morgan & Company were about to place but had not yet placed.

Judge Swann.— Had just been received by J. P. Morgan & Company, and were about to be placed, but they had not yet placed them.

Mr. Seymour.—I don't know of any such case.

Judge Swann.—Morgan & Company tell me through their counsellor that these various men whose names you mentioned there, would notify almost every munitions factory immediately and in advance before they could ask for bids from these various factories, of these orders that had come in from Morgan & Company and that these men who you say are brokers in munitions, would demand from the various factories a certain percentage or brokerage in case they sold to Morgan & Company, so that they were obliged to get a commission every time Morgan & Company bought anything, they were obliged to get a rake-off from the seller.

Now, as they notified every manufacturer in America and as one or the other manufacturer was to get the order, they would get the brokerage or the commission without fail and divide it up with somebody in Morgan's office, their clerks.

Senator Thompson.—They are touts.

Judge Swann.—That is it exactly. That is what they tell me and they have given me various letters on your letter heads signed by one of these gentlemen at various times. I might say that the wording of these letters indicated that there was something known to the writer and the receiver which the average reader can't understand, in other words it was in language which referred to some confidential and oral agreement among them.

Mr. Seymour.—I don't think there can be anything in that, Judge Swan, because I don't know how they could claim commissions on that sort of a transaction unless the manufacturers agreed to pay them commissions.

Judge Swann.—Well, they do probably have some arrangement.

Mr. Seymour.—The ammunition manufacturers are the last in the world to agree to anything of that sort, because everybody knows who they are and they don't have to have introductions.

Judge Swann.—It was these men who evidently thought so that sent these letters to Morgan & Company, that is what they



claim. I know nothing about this thing I am telling you but what the counsellor for Morgan & Company tells me.

Senator Thompson.—The ammunition maker if he got an exact copy of Morgan's order, and this order would sometimes tell Morgan & Company what they could pay for these goods and this information was advance information for them, inside information of just the limit that Morgan could go.

Mr. Seymour.—I have never seen anything of that sort in the office.

Senator Thompson.—Would any of these men be likely to be engaged in that sort of business?

Mr. Seymour.—I don't think so. I should be very much surprised if they were?

Senator Thompson.—Did you know them before you came there?

Mr. Seymour.—No.

Judge Swann.—Was not Sulzer under indictment?

Mr. Seymour.—I don't know.

Judge Swann.—He is to be tried for forgery and larceny on Monday.

Mr. Seymour.—Against Sulzer.

Judge Swann.—Yes.

Mr. Seymour.—That is news to me.

Judge Swan.—He forged an eight hundred dollar note or check or something of that sort. I am only speaking from memory.

Senator Thompson.—Is there any trouble about having those men before us?

Judge Swann.—Not at all.

Senator Thompson.—From what Mr. Seymour says, the very circumstances are such that it could not have passed anywhere

but to the Allies, it could not go anywhere except where Morgan sent it.

Mr. Seymour.—I never had any contract for munitions in my office to anywhere but to the Allies. There was one contract directly with the Spanish Commission.

Senator Thompson.—If there was anything of that kind it must have been one of these other men in your office. Do you suppose they have any objection to coming before this Committee?

Mr. Seymour.—I don't think they would have the slightest objection.

Senator Thompson.—Did they have access to your stationery?

Mr. Seymour.—I should think so.

Judge Swann.—I think it fair to them to tell them that I have their original letters, unless they are forgeries, on your letter heads, in which they copy cablegrams from France and I have seen their letters and they are good copies.

Mr. Feinberg.—In their own handwriting?

Judge Swann.—Typewritten.

Mr. Moss.—May I ask you, Judge Swann, if you recall the date of the alleged forgery of Sulzer?

Judge Swann.—No, I don't.

Mr. Moss.—Is that an old or a new case?

Judge Swann.—My recollection is that is at least a year old, but I can't remember.

Senator Thompson.—I think you had better arrange to have those two other gentlemen in the morning, Mr. Moss.

Mr. McQuiston.—You said it was a contract you had with the Spanish Commission? Who are the commissioners?

Mr. Seymour.—I did not have much to do with that. I was sick at the time. I don't know who the commissioners are.

Senator Thompson.— Who paid for that ?

Mr. Seymour.— I think they paid for it directly.

Senator Thompson.— How long ago was that ?

Mr. Seymour.— It must have been months ago.

Judge Swann.— Mr. Seymour, do you know where Phillips lives ?

Mr. Seymour.— He lives in Montclair.

Judge Swann.— Montclair, New Jersey ?

Mr. Seymour.— Yes.

Judge Swann.— Where does Hills live ?

Mr. Seymour.— East Orange, New Jersey.

Judge Swann.— Sulzer ?

Mr. Seymour.— I think he lives in New York, I am not sure about that.

Mr. Moss.— About getting those men here. Will you get them here for us ?

Senator Thompson.— Have them down here at 11 o'clock to-morrow.

Mr. Seymour.— I will.

Mr. Moss.— Say to them that they will be heard in executive session.

Senator Thompson.— We would be glad to have a representative from your office, Judge Swan.

Judge Swann.— I would be very glad to.

The executive session adjourned until 11 o'clock to-morrow morning.

## THURSDAY AFTERNOON SESSION.

GERALD L. HOYT, being duly sworn, testified as follows:

Examination by Mr. Schuster:

Q. Mr. Hoyt, where do you reside? A. My legal residence is in Scotsburg, Dutchess county. I spend five months of the year in New York.

Q. Was there not a time when you were a director of the Interborough Company? A. Yes.

Q. When was that? A. From the end of April, 1908, to the 17th of March, 1913.

Q. Were you at any time on any of the inspection committees having to do with the negotiations which resulted in the so-called "dual" contracts? A. I never was.

Q. Have you any knowledge of the transactions, any personal knowledge of the transactions resulting from that contract? A. Nothing more than what was reported to the board.

Q. Did you have any conversation with Mr. Shonts in respect thereto outside of the regular meetings? A. No.

Q. Would you tell us what you can of the reports from time to time made in connection with the contracts? A. Well, my recollection is vague. The president reported from time to time the progress as I recollect, there were propositions made and counter propositions. I don't remember anything very definitely.

Q. Were you a regular attendant at the meetings of the board of directors? A. Yes.

Q. Were you at any time a member of the executive committee during those negotiations? A. No, I never was.

Q. You resigned in March, 1913? A. Yes.

Q. Did you resign before or after that contract was entered into? A. I resigned on the 17th.

Q. You were not a member of the board at that time? A. No. That was on the 17th of March.

Q. Do you care to tell us why you resigned? A. Why, yes. I felt the increasing difficulty attending the meetings. I resigned from the Interborough and from three or four of the corporations at the same time. I was away out of town most of the year.

Q. It was not because of any difficulty that you had with other members of the board or with the officers of the company? A. No.

Q. Did you have any discussions or talks with any of the other directors in regard to the contract or reports? A. Not at all. I never saw any of the other directors excepting at the board meetings.

Q. Were there any discussions in the board meeting that you recall pertaining to those contracts? A. No. Yes, the propositions were brought up and discussed. But no questions of difficulties.

Mr. Feinberg.—Have you ever heard it?

A. I have read the reports.

Q. Were there any discussions at board meetings with relation to necessary legislation to enable the city to enter into contracts that you recall? A. I don't recall it.

Q. Was there any discussion as to the manner of carrying out the contracts at any time that you recall? A. No.

Q. Or their financing? A. No, beyond the negotiations with J. P. Morgan & Company, which resulted in their agreement.

Q. Was there anything in relation to that that you recall reading about in the newspapers, anything you had your recollection more keen on as a result of that? A. I remember the question coming up of the J. P. Morgan & Company.

Q. What was there about that, will you tell us your recollection? A. My recollection of it is that the amount seemed a large one, but the common opinion of the board was that the services were varied.

Q. Who expressed that opinion? A. I don't recall.

Q. What did you think about it? A. I thought that way. I knew it was large, but I knew it was a large house, a business house.

Q. Do you recall the amount of that fee? A. I think it was \$500,000.

Mr. Smith.—Was there any discussion in the board in regard to the necessity of dealing with the firm of J. P. Morgan & Company?

A. No.

Q. As against other financiers? A. No, not that I remember.

Mr. Feinberg.— Excepting the fact that it was the house that handled the financial proposition large enough to raise the funds.

A. The largest.

Q. As a matter of fact, Mr. Shonts had made the negotiations and then reported what he had accomplished? A. I don't recall that, but I have read that in the papers.

Mr. Feinberg.— Is there anything further, Mr. Hoyt?

A. I don't think so.

Q. Is there any statement you care to make in regard to this? A. Nothing at all.

ALFRED SKITT, being duly sworn by Mr. Feinberg, testified as follows:

Examination by Mr. Schuster:

Q. Mr. Skitt, where do you reside? A. In Yonkers.

Q. Was there a time when you were a member of the board of directors of the Interborough Rapid Transit Company? A. There was.

Q. Can you tell us during what period? A. From 1903 or 1904 to 1913.

Q. At what time in 1913 did your term cease? A. The last meeting that I attended, I think, was in the last week in March, about the 25th of March.

Q. So that you were a member of the board of directors at the time the contract with the city for the construction and operation of the subway was entered into on March 19, 1913. A. I was a member of the board but I was not in the city. I left New York on the 27th of February and I was not here.

Q. You were not present at the board meeting that finally approved the contract and authorized its execution by the officers of your company? A. Yes.

Q. Had you been an active member of the board of directors? A. I attended very regularly all the years I was a member.

Q. Were you familiar with the negotiations resulting in that contract? A. Yes.

Q. Were you a member of the executive committee at any time during that time? A. No, sir.

Q. Do you recall any proceedings in which reports were made to the board of directors in connection with those negotiations? A. Not by dates, but a great many reports.

Q. Will you tell us, do you recall a time when the company was made a proposition to finance the construction of subways outside of their own funds, or their own credit, instead of joining with the city in funds and credit? A. My recollection is that for the first two years of the negotiations that the Interborough always contemplated furnishing their own money.

Q. Do you recollect what occasioned the change of the company's attitude or the change in the proposition that resulted in the joint financing project? A. I think it was an economic reason that the city kept enlarging the system and making suggestions of competition that would have made it impossible to loan the interest on the money, and as the proposed system enlarged it became more impossible and I think, as I remember it, the preferential idea was first suggested by the Brooklyn Rapid Transit Company, that is if my recollection serves me.

Q. There was a period during the negotiations that the Interborough withdrew from consideration of the matter? A. For the reasons I have given you.

Q. Well, will you explain to us just why that would be? A. From running into outlying districts and territories that were so sparsely settled that there would not be fares enough.

Q. Well, but the city and the company are now expecting as much money as was contemplated in the construction of the transit system and they expect to receive a sufficient amount to pay interest on the cost, do they not? A. After a while, yes.

Q. They don't expect they will be able to do that at this time? A. I should think not.

Q. Was that the understanding of yourself and the other members of the board of directors at the time the contract was entered into? A. Yes, that there would be a time when the city's interest would be deferred.

Q. But the company's interest would not be deferred? A. No, because the bondholders would not wait.

Q. Have you any recollection of the matter of the so-called Stevens contract having been presented to the board of directors at any meeting when you were present? A. No, sir, that was after my resignation.

Q. Therefore, you have no knowledge of it? A. No, sir.

Q. I believe you said you were not a member of the executive committee at any time. A. No, sir.

Q. Did you have any talks with Mr. Shonts in regard to this matter either in or outside of the routine meetings? A. I don't remember any special conversation. We all advised together whenever it was necessary.

Q. Was there any conflict in the board of directors at any time in connection with these matters? A. I don't remember any.

Q. Is there anything you care to say in regard to this matter, outside of what you have said? A. Nothing further.

The witnesses will be excused until to-morrow morning at 11 o'clock. There will be no further open session to-day. The Committee will now go into executive session. The regular session will adjourn until 10 o'clock to-morrow morning.

Adjourned to May 19.

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## PUBLIC SESSION.

The Committee was called to order at 12.15 by Senator Thompson.

Senator Thompson.—This Committee, in relation to the so-called wire-tapping subject, has insisted upon knowing the facts in regard to the matter as we run along. The subject is one that to the public is known, and the question as to what kind of a law should be established on this subject is one that disturbs the minds of men of larger experience than the members of this Committee, and the course that that law would take, if one were being considered by the Legislature to-day, would be subject to



a great deal of debate and a great deal of question, because you have got to know every interest affected in order to intelligently legislate on this subject or intelligently recommend legislation.

Now, the same kind of caution is necessary in this proceeding in asserting the facts on which to base your report, and the Committee have realized that for some time, and we concluded some time ago to proceed, but to proceed intelligently, which means in some instances cautiously, but we are going to proceed just the same and continue through the investigation and give the public the entire facts; and this Committee has at no time involved knowingly any business or commercial or governmental interest in any way to its disadvantage, and so far we know that we have not so involved any interest unknowingly or unthinkingly. So far, there has been no honest interest in any way harmed, and we don't propose that there shall be.

To that end we will continue as we did yesterday, to take our initial statement of facts, with which the Committee is not familiar, in executive session, and as we ascertain them we will give them to the public. It might be unfair to the public and certain interests involved to give out the facts in piece-meal and without knowing all the phases of the situation, and that is the excuse for this Committee proceeding in executive session first. We will finish up the inquiry in the Seymour case and we will do that this morning, and we will hear the statements of all the public officials, because it is necessary for us to have their angle on the matter, and if the public officials and others will be patient, I think we are willing to work eighteen hours a day, but not over that, because we want six hours for sleep.

Is there anything else?

Mr. Moss.—I think you have brought out the idea which is basic, that officials and others who want to take the stand must wait until the Committee understands the ground facts. That was the attitude yesterday and it is the attitude to-day. It is not the attitude of refusing the stand to people who want to testify, but of knowing the subject ourselves before we ask them. They have been knowing something on this subject for a long time, but it is new to us.

Mr. Thompson.—Well, public officials are not our mission, and sometimes they don't know all the facts. Sometimes it is just as well for them, in giving their advice on questions of reports on which to base laws, that they know all the facts before they present their case.

Mr. Moss.—And I wish to say this, too, Mr. Chairman, as one of the counsel responsible for developing evidence, that the Seymour case which has proved to be so interesting, we knew perfectly well before it was produced could do no harm to any interests, because it had received publicity some weeks ago and we knew that fact before any Seymour person was put up on the stand. It could not interfere with any interests, local or otherwise.

Senator Thompson.—Why, it is perfectly natural, if I were the banking firm of J. P. Morgan & Company and somebody got access to my correspondence and cablegrams and letters, I would be pretty mad about it, and if I had a police department, I would probably go to them and ask them if they couldn't do something to stop it; and if, on the other hand, I was the police department, I would see if I couldn't stop it. There isn't any question about that.

Mr. Moss.—I want to report to you, Mr. Chairman, that both members of the firm of Seymour & Seymour are here and the persons associated in the office there who have been mentioned are all here and declare that they are anxious to talk to you, and I have caused Judge Swann to be notified that they are here and that he could be present when they talk.

Senator Thompson.—To go further with my simile, I would say that if I were Seymour & Seymour and somebody came into my office and opened my desk and took my papers and things, if I had read the fourth amendment to the Constitution of the United States, I would be pretty cross, too, and I would see about that.

Corporation Counsel Hardy.—Commissioner Woods is ready to go on the stand, and anxious to go on the stand, and tell you the manner in which wires are tapped in this city.

Senator Thompson.—I will say in answer to that, that in Seymour case there is no national question involved and there never has been.

Mr. Hardy.—I want to say in reply to that, that there is a national question involved and I defy you to show the contrary.

Senator Thompson.—I don't have to show to the contrary. I didn't want to make that statement to the public, I didn't care to. This Committee is, I think, able to handle this situation and to make this investigation, and I think they can be depended upon to do the right thing, and I don't believe that from any quarter should come any insinuation imputing to this Committee a carrying on of investigations which affect something of national importance or governmental importance, especially when there is no fact in the case to warrant any such assertion; and when that time comes we will be ready to talk about it. It is a funny thing to me that the national government can be involved when the officers of the national government didn't have anything to do with it and didn't know anything about it until the last two or three days.

Adjournment.

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**MAY 19, 1916.**

### EXECUTIVE SESSION.

The session was called to order at 1 o'clock by Senator Thompson.

OZRO B. PHILLIPS was called to the stand and sworn by Senator Thompson:

Mr. Moss.—What is your business, Mr. Phillips?

Mr. Phillips.—Brokerage business.

Q. Brokerage in what lines? A. General.

Q. Where is your office? A. 120 Broadway.

Q. In the suite of Seymour & Seymour? A. Yes, sir.

Q. How long have you been there? A. Of course, we have only been in our present quarters since in January, I think. I was

down in Mr. Seymour's office in the old place. It must have been a year. I suppose if you would give me time to think back, I could get the exact duration.

Q. Do you have a lease with him or pay from month to month?

A. The understanding when we came to 120 Broadway was that Mr. Hills and I were to rent one office. I think that was to be one-quarter of the entire rental.

Q. Are you and Mr. Hills associated together? A. Yes, sir.

Q. Partners? A. Not in a formal copartnership.

Q. But you do have business interests together? A. Yes, sir.

Q. Now, before I ask you any more questions, Mr. Phillips, I want you to understand that Judge Swann is here as district attorney and that it is possible that these matters may be inquired of you in some way by the criminal authorities, and won't you, in answering my questions, have that in mind? If there is anything that I ask you that you feel you ought not to answer, why, you have the privilege of saying so. A. I wish to be perfectly frank and honest with the whole situation.

Q. Of course, you realize that if the district attorney comes here and hears your testimony, it would be possible for him to use your answers in criminal proceedings hereafter. I don't know what he would do in this regard, but I feel as a lawyer that I ought to advise you that he is here is the district attorney. Your statement here to us would not give you any immunity, you understand that, too. A. Yes, sir.

Q. I will just lay the foundation for the frank statements you want to make. Are you willing to tell the Committee what business you have been doing within the last six months? A. I have been looking into commercial propositions with a view of having them financed, and in the war business in general.

Q. You have been looking for business and doing business in munitions of war to some extent? A. Yes, sir.

Q. And doing it as a broker? A. Entirely.

Q. Have you, or are you acquainted with anybody employed in the office of J. P. Morgan & Company? A. I personally don't know a soul there.

Q. Do you know any one that you have reason to believe has an association with the office of J. P. Morgan & Company or any

of their people? A. I know of no one who would have such association. That is, we all have acquaintances, but I know of no one specifically.

Q. You are not conscious of any line of information that might exist between yourself and that office? A. Only general information that everybody has that has anything to do with war business.

Q. Where do you live, Mr. Phillips? A. Montclair, New Jersey.

Senator Thompson.—What munition business were you interested in?

A. What particular line, you mean?

Q. Yes. A. Well, I imagine that about everything that has been handled in the war business has come under my observation.

Q. Whom have you dealt with? A. With brokers innumerable, officers of companies, lawyers, bankers, and so called foreign agents and domestic concerns.

Q. They come and meet you at this office? A. Yes. Well, of course, I would have to go to their offices sometimes.

Q. Did they use your telephone? A. Well, I don't recall any instance like that where they used our telephone, except as people naturally do sometimes, but I think in no specific instance.

Mr. Moss.—Do you have an instrument of your own?

A. No.

Q. Where is the telephone? A. It is outside. There are extensions in both of the Seymour offices.

Q. No extension in yours? A. No.

Q. Where do you use that telephone? What is the operation? A. We just walk out to the clerk's desk and pick it up and get the central operator.

Senator Thompson.—Did you make any contracts for munitions, or did the people that you represented make any contracts?

A. The people I worked with, you mean?

Q. Yes. A. Yes.

Q. And where did those contracts go? Who were they with — what government? A. One of them was with the Canadian Car

Foundry Company. I suppose that would be called a Russian contract.

Q. Where were the others? A. The other was at Morgan's.

Q. With the Morgan firm? A. Yes, sir.

Q. Then you have only accomplished two contracts? A. Yes, sir.

Q. And one of them went through Morgan & Company and the other through the Canadian Car Company? A. Yes.

Q. Who paid the money from the Canadian Car Company? A. The money is to be paid from the Consolidating Car Heating Company, who took the contract.

Q. Where did they get their money under the contract, the Canadian Car Foundry Company, through what financial company? A. I can't answer that. I do not know.

Q. And where were those goods shipped? A. I have no direct knowledge of where they were shipped, but the common report is that, that is the big Russian contract that the Canadian Car and Foundry Company got.

Q. The Canadian Car and Foundry Company are the ones that gave the shipping direction on that order? A. Undoubtedly.

Q. And J. P. Morgan gave the shipping directions on the other order? A. Yes.

Q. And have you had any negotiations with others about other orders? A. Yes, I have had many and various negotiations.

Q. I mean with the chance of making of actual contracts? A. If you will pardon me for digressing for just a moment, if there is anybody who has had anything to do with the brokerage business, you go home in the evening and think you have made a million dollars and you come back in the morning and you don't have anything. That is the best way to answer your question.

Q. But there hasn't been anything tangible enough to get anywhere near an executed contract except these two? A. No, sir.

Q. You might now question him, Mr. Swann, if you like.

Judge Swann.— You are Mr. Phillips?

A. Yes, sir.

Q. Are you the only Mr. Phillips in this office of Seymour & Seymour? A. Yes.

Q. Did you write on Seymour & Seymour's letter head paper, signing your name, to any of the manufacturers of war munitions, in which you copied a cablegram, or what purported to be a cablegram, to J. P. Morgan & Company from the minister of finance of France or any of the other cabinet officers of France? A. I do not believe I did. That is a matter, however, I should want to look through my files about before I answer that question positively.

Q. But now you say you have no recollection of having done it. A. No such official as you refer to at all.

Q. Did you write a letter, to be more specific, on or about the first of February, did you write a letter, signed by yourself, in which you purported to set forth a copy of a cablegram that was received by J. P. Morgan & Company from any person in France? A. I don't at this moment recall having given any information that purported to come from any official.

Q. I didn't say any official — any person in France, which purported to come from any person in France to J. P. Morgan & Company. A. I made a report that there was a report or rumor, but I don't recall any report in that exact language.

Q. I have such language that purports to be signed by you, so that we might as well be very candid and free about it; and now I am asking you if you ever wrote such a letter on the letter head of Seymour & Seymour, and signed by yourself? A. Judge Swann, I have written undoubtedly to a great many manufacturers and on the letter head of Seymour & Seymour.

Q. Suppose you write, if you don't mind, your signature.

Mr. Moss.— Are you willing to show his signature to him?

Judge Swann.— I haven't the letter with me here.

Mr. Moss.— Senator Thompson makes the suggestion that it would be wise to show him the letter.

Judge Swann.— Sit in your natural position, just as you would sign a letter.

(Mr. Phillips wrote his signature on a sheet of paper.)

Mr. Moss.— I will mark this, Mr. Chairman, Exhibit I, for this day.

Judge Swann.— Did you at any time see what purported to be a copy of a cablegram sent from France by any one in France to J. P. Morgan & Company during the past winter? A. I haven't.

Q. Did you read a letter on or about February last, or any time during the past winter, which purported to contain a copy of a cablegram received by J. P. Morgan & Company? A. I really do not believe I have ever seen such a letter.

Q. Did anybody ever tell you that he had seen a cablegram received by J. P. Morgan & Company? A. Not to my knowledge.

Q. From France or any other country? A. I have heard men say they have seen various things about this war business, but I don't recall any specific instance in which I was told such a thing as that.

Q. Well, now, I think I can probably have that letter here at 2.30.

Mr. Moss.— You will be here at 2.30?

A. Yes.

Judge Swann.— Now, this letter that I refer to, and this cablegram, was for a very large contract. I might say that it would seem, unless your business is an enormous one, inconceivable that if you did write the letter that you can't remember such a matter at this time. It is of very great importance, and it was signed, or purported to be signed, and actually was signed, so far as the cable was concerned, by the Minister of Finance of France to J. P. Morgan & Company, and the letter which I have purports to be signed by you on the letter head of Seymour & Seymour, on which you set forth, or the person signing the letter sets forth, an exact copy of this cablegram and translated with Morgan's code. Now, you say —

A. Translated with Morgan's code?

Q. Yes, translated into English from the code. A. I have never seen such a thing.

Q. You never saw the cablegram? A. No, sir.

Q. But did you sign a letter which purported to set forth copy of such cablegram? A. I don't recall that I set out in any letter I have written to manufacturers any such specific information.



Q. Well, do you recall about the fourth day of February, or thereabouts, any letter signed by you upon the letter head of Seymour & Seymour, in which a reference is made directly or indirectly to a cablegram received or said to have been received by J. P. Morgan & Company, from one of the Ministers of France on the subject of munitions? A. At this moment I am obliged to say that I don't have any recollection of that.

Q. Can you say that you never signed such a letter? A. Well, I don't believe it would be proper for me to say such a thing as that until I consulted the files to see exactly what I have signed.

Q. Well, do you have any letter files? Do you keep copies of your letters? A. Some I do and some I don't.

Q. Well, a letter of that kind? A. We have not used Mr. Seymour's stenographer excepting in very, very rare cases. It must have been written in longhand.

Q. No, it was written in typewriting and purports to be signed by you. How often do you use Seymour's stationery on the average in writing in regard to war munitions? A. I can't tell you anywhere near the exact number, but I think the proper way to answer that would be to say occasionally.

Q. Do you have any other business except as a broker in war munitions? A. Oh, yes. I am interested in a few industrial propositions.

Q. During the past winter—let's bring your mind back to January, February and March? A. Well, those months don't stand out in my mind any different from other months.

Mr. Moss.—The question is, did you have any industrial propositions in that period, about that time?

A. Well, since January I haven't had.

Judge Swann.—Can you suggest any reason why J. P. Morgan & Company would want to spy upon your business or upon the business of any one else in that office.

A. There is no reason why the firm of J. P. Morgan & Company should spy on my business.

Q. Did you think that you had anything, or can you suggest anything that was under negotiation by you that would be of any

interest whatever to J. P. Morgan & Company or any member of that firm? A. That would be of interest to them?

Q. Yes. A. I have had no war transactions that Morgan would care to know anything about.

Q. Well, did you have any other transactions that Morgan or anybody connected with that firm would have any interest in?

A. No.

Q. Do you know Mr. Sulzer? A. Yes.

Q. You know Mr. Hills? A. Yes.

Q. Did Sulzer have desk-room with Seymour & Seymour? A. Yes.

Q. Were you associated with Sulzer in any business transactions? A. Yes, yes. I think I might say that everybody who was there knew practically all about anything that went through there about war munitions.

Q. Well, was Mr. Sulzer interested in any way, did he have any financial interest in your transactions there? In other words, did he participate in any way in them? A. Yes, sir, he was supposed to.

Q. Were you working together with the gentleman? A. Just what do you mean by working together?

Q. Well, in any of these transactions in placing war contracts? A. Naturally it would follow that if we had what is called a little war organization, whereby on all business done there would be a division, he would certainly be interested.

Q. Well, can you state whether he did participate in any of your contracts? A. Well, we haven't had any money, so I am unable to say. He hasn't participated because we haven't had any money.

Q. You haven't seen any money from these war contracts? A. No, sir.

Q. Now, you state that you don't know, have no personal knowledge of, and never met anybody in the employ of J. P. Morgan & Company? A. I have never met?

Q. Yes. A. Now, I have never been introduced to anybody.

Q. No, not introduced, but have you ever met any one? A. Well, I introduced myself to Mr. Prindel.

Q. Of J. P. Morgan & Company? A. Yes.

Q. What position does Mr. Prindel have? A. He is in the foreign department, but just what his position is, I don't know.

Senator Thompson.— May I interrupt just a minute? I have got to leave and go to lunch with Chairman Straus of the Public Service Commission. Senator Towner will act as Chairman.

Mr. Moss.— We will sit until half-past one and adjourn until half-past two.

Senator Thompson.— I want Judge Swann and the Corporation Counsel here given every courtesy.

Judge Swann.— That is characteristic of you. That sounds like Niagara county, doesn't it?

Q. Now, how often have you spoken to Mr. Prindel? A. I believe that I have been in to see Mr. Prindel three times.

Q. Where did you see him? A. At his office.

Q. At the office of J. P. Morgan & Company? A. Yes.

Q. Do you know whether or not you were shadowed as you left the office? A. I do not.

Q. You don't know whether or not you were followed from J. P. Morgan's to Seymour & Seymour? A. I don't know.

Q. Did you ever go to J. P. Morgan's office with Mr. Hills? A. With Mr. Hills — not to my recollection.

Q. Or with Mr. Sulzer? A. No, sir.

Q. Do you know if Mr. Hills knows Mr. Prindel? A. I believe Mr. Hills does not know Mr. Prindel.

Q. Do you know whether Mr. Sulzer knows Mr. Prindel? A. I do not believe he does.

Q. When I said "know" him, I meant do you know if he ever had any conversation with him? Of course, we can't know what conversations he had. A. No, I know nothing about any conversations.

Q. Did you ever see either Mr. Sulzer or Mr. Hills in conversation with Mr. Prindel? A. No, sir.

Q. Not what they said, understand. A. No, I never saw them.

Q. I may be mistaken, but I thought that you told Mr. Moss that you never knew anybody nor had never met anybody connected with J. P. Morgan & Company. Now, I may have mis-

understood you, but I thought that you told Mr. Moss, in answer to his question, that you did not know anybody connected with J. P. Morgan & Company; and now did I understand you to say that you called on Mr. Prindel in the office of J. P. Morgan & Company three times? A. Yes, but you will have to qualify what you mean. I am not acquainted with a soul there, outside of the office.

Q. You meant in a social way, in answer to Mr. Moss' question? A. I don't think that it is proper for me to say that I know Mr. Prindel, even, because I just went in there in what you call a bald-headed way. The fact of the business is, if you would like to know that story, I thought the name was Pringle. There had been rumors around the street that the French Commission and the British and so on had enormous contracts with Morgan. You have heard a lot of that talk about the war business. I had heard so many of those reports that I made up my mind I would try one. I went down to inquire for a Mr. Pringle in the office of Morgan & Company. I had a written proposal for Mr. Pringle and I showed it to the office boy, and he says, "We have no such gentleman here." I says, "You haven't? Well, have you anything like it?" And he wrote out Mr. Prindel for me and I took his pen and changed the "g" to a "d" on the outside of the envelope in which I had my proposal.

Mr. Moss.—Where did you get the name?

A. I don't recall where I got the name.

Q. Somebody told you it was Mr. Pringle? A. Some broker had undoubtedly told me it was a Mr. Pringle. Of course, it is pretty generally known that such men handle war transactions, and war brokers know their names, of course.

Senator Towner.—Mr. Phillips, in answer to Judge Swann, you said that you had called on him at least three times. Did you have any conversation with him other than on the occasions of your calls?

A. No.

Q. Or talked with him? A. No.

Q. Over the phone? A. No. Well, I called him up to make an appointment.

Q. Is that the only occasion you ever talked with him over the phone? A. Yes.

Q. Or by letter? A. No.

Mr. Moss.— I suggest, Mr. Phillips, that you bring your correspondence.

Judge Swann.— That would be very fine, indeed.

Senator Towner.— I wanted to ask him, have you copies of those letters that were written on the typewriter? Have you copies of all the letters addressed to the gentleman you spoke of, Mr. Prindle, that were typewritten or written in longhand?

A. Well, I think I have, because I think it is only one. Yes, I think I have that one and only letter.

Q. Well, you spoke of letters in your answer to Mr. Swann.

Mr. Moss.— That was letters in a general way?

A. Yes, letters in a general way to manufacturers. I recall it now, there was only one letter.

Mr. McQuiston.— I understood you begin to say, "I personally do not know anybody in J. P. Morgan's office." Does that quote you correctly?

A. I personally don't know him. Perhaps I ought to say that I don't know him personally. The only person I have ever talked with or know anything about is Mr. Prindle, as I just said to Judge Swann.

Q. Did you have anybody else in mind when you said "I personally do not know anybody——?" A. No, sir.

Q. Did you have any connection in mind with somebody else in J. P. Morgan's office? A. No, sir.

Q. Is there anybody else connected in business or interested in these contracts besides Mr. Sulzer and yourself? A. Oh, yes, Hills and Mr. Sulzer and Mr. Frederick Seymour and myself?

Q. Any one else besides those? A. No.

Q. Of no interest whatever? A. No, sir.

Q. There is just the four of you? A. Oh, De Witt. I beg your pardon.

Q. Oh, you have a Mr. De Witt in your office? A. Yes.

Q. What is his business? A. General war business — war broker.

Q. Has he a room or desk-room? A. The four of us occupy one desk.

Q. Four of you occupy one desk? A. Really one room.

Q. With the same desk? A. Yes.

Q. How long has Mr. Sulzer been having his desk-room there? A. Well, longer than I have. I don't know how long it has been.

Q. Does he get his mail there? A. Yes.

Q. All of you get your mail there? A. Yes.

Q. Which of the four of you has been with Seymour & Seymour the longest time? A. Well, I think Mr. De Witt was there first and I think he brought Mr. Sulzer and Mr. Sulzer invited Mr. Hills and me to join with them in the war broker business.

Q. Were you and Mr. Hills associated together before you went into Seymour & Seymour's office? A. Not in an active form of way.

Q. Didn't occupy the same office together or anything of that kind? A. Well, no.

Mr. Schuster.—What is Mr. De Witt's first name? A. Gasherie.

Mr. Moss.—Where is he now? A. I think he is down at the office.

Mr. Schuster.—Does he know about these munition contracts? A. Yes, sir.

Mr. McQuiston.—I think we had better have Mr. De Witt here.

Mr. Moss.—Yes.

Mr. Phillips was excused and Mr. Hills was called.

MR. HILLS was sworn by Senator Foley:

Senator Foley.—State your full name.

Mr. Hills.—William Hills, Jr.

Q. Your address? A. Twenty-two Ivanhoe terrace, East Orange, New Jersey.

Mr. Moss.—What is your business, Mr. Hills?

A. At present?

Q. Yes. A. General promoting, as we say.

Q. And you have been engaged in the brokerage business? A. Yes, more or less.

Q. In contracts? A. Yes.

Q. How long have you been in with Seymour & Seymour? A. I have been in that office, I should say, about six or eight months.

Q. Have you any business interest with other persons in the office? A. Why, yes, I have interest with Mr. Phillips and Mr. Sulzer.

Q. A sort of partnership arrangement? A. I wouldn't call it a partnership arrangement, sir. Any business that is done through the office there, the profits are divided, but we don't call it a partnership.

Q. That is, if business is done in which several have an interest, the profits are divided? A. Yes, sir.

Q. How long have you known Mr. Phillips? A. About a year and a half, I should judge.

Q. How long have you known Sulzer? A. I first met him about two months, I should judge, before I went into the Seymour office.

Q. Was that in the old office? A. No, before I went into the old office.

Q. How long have you known De Witt? A. Probably about a year.

Q. And at various times have you all been interested in brokerage? A. Yes.

Q. Munition contracts? A. Yes, sir.

Q. And the like? A. Yes, sir.

Q. Have you handled any munition contracts? That is, have you secured any? Have you sent out any goods? A. Munitions? No, sir.

Q. Nothing has gone out? A. No, sir.

Q. Did you effect any contract you were interested in? A. Individually?

Q. No, you being interested. A. Yes, sir, I think two or three. You are speaking about munitions? Well, anything used in war. A. Oh, yes, sir, several contracts have been put through.

Q. They have been put through? A. Yes, sir.

Q. Goods have been delivered? A. I don't know about that. I think some of them have.

Q. I want to say to you — I forgot to do it — as I did to the gentleman before you, Judge Swann here is the district attorney. Of course, he will naturally hear all that you say, and anything that you say, he remembers, you know, and it might be used in any criminal proceeding hereafter. A. Yes, sir, I understand that.

Q. And you understand, too, that your testimony here would not be barred to any proceeding against you. I am not saying that any proceeding is going to be made against you, but we are trying to get the truth of this, and if you feel at any time you ought not to answer the question, you may say so. I am going to ask you definitely about those contracts — whom you had them with. A. None of these munition contracts have I had anything to do with personally.

Q. I am speaking now of contracts which you are interested in. Don't you think you have to examine my questions. They are general and they call for frank answers and you are under no obligation to answer specifically. You can answer any way that you can to let us know all the facts. What I want to get at is contracts that you have any knowledge of, either directly or indirectly. Now, are you willing to tell us with what concerns you had those contracts with? A. Anything that I may tell you about these contracts are from what are told me by my associates in the business, as in none of these contracts have I personally been concerned, consequently I am giving you what you might term hearsay.

Q. All right. A. There has one contract been put through for the machining of shells, the parties letting the contract, as I understand, being the Canadian Car and Foundry Company, and the parties doing the machining being the Consolidated Car Company.

Q. There have been one or two other contracts? A. I am not sure. My recollection of the name of the other was the Humboldt Fibre Company and the buyer being J. P. Morgan & Company, for some foreign people.



Q. Do you know whether any of these goods have gone out of the United States? A. No, sir.

Q. Do you know where any of these goods have gone or were intended to go? A. I do not.

Q. Have you any information that they have gone out of the United States? A. No, sir.

Q. Do you believe they have? A. My recollection of the contract on the linters, the Humboldt Fibre Company contract, was that it was to take place sometime in March or April, therefore I would assume that the linters had been made with that object.

Q. So far as this contract is concerned that you are talking about, did that contemplate the delivery of goods in a foreign country? A. That wasn't my understanding, sir.

Q. All to be done right here in this country? A. Yes, sir.

Q. Contracts were rather incidental to the manufacture of munitions? A. Yes, sir, I should say so. Some were for war material necessary to their manufacture.

Q. Have you been interested in any contract whatever that had for its object the shipment of arms or munitions of war to Mexico? A. No, sir. When you say interested in any contract, no. Over a year ago, or perhaps a year and a half ago, I was introduced to Mr. Somerfield, a man stopping at the Hotel Astor, who was presumed to be purchasing agent for Villa. At that time he asked me to produce him some cartridges, which I was unable to produce.

Q. That was a year and a half ago? A. Oh, yes, a long time.

Q. And there was no embargo on goods at that time? A. No, sir.

Q. And I believe there is not now? A. No, sir.

Q. I think, Judge Swann, I will turn Mr. Hills over to you.

Judge Swann.—You know the Humboldt Fibre Company?

A. I know of them by reputation.

Q. Didn't you have some dealings with them? A. No, sir.

Q. What did you mention about the Humboldt Fibre Company a few minutes ago? A. I said I understood the others put through a contract for the sale of linters for the Humboldt Fibre Company with J. P. Morgan & Company.

Q. Now, do you remember what time that was, approximately?  
A. Why, it is my recollection that I was informed that that contract was made some time in February, I should judge.

Q. Now, did you ever see a letter dated about February 4, signed by Mr. Phillips, addressed to the Humboldt Fibre Company? A. No, sir, I am not familiar with the correspondence. I had nothing to do with the transaction at all.

Q. And in which they informed the Humboldt Fibre Company that J. P. Morgan had received a certain cablegram from the French Minister of Finance and in which the whole of the cablegram was set forth by Mr. Phillips to the Humboldt Fibre Company on February 4 or thereabouts? A. No, sir.

Q. Didn't he ever tell you about that communication? A. No, sir.

Q. Well, did they ever tell you how they happened to make the contract with Morgan? A. No, sir.

Q. What did the Humboldt Fibre Company do with Morgan — what contract did they make? A. Merely from hearsay, I understood the contract made by the Humboldt Fibre Company with Morgan was for so many tons — I don't recollect now how man — of cotton linters.

Q. Do you know how they got hold of the fact that Morgan wanted that particular supply of stuff? A. I haven't the faintest idea.

Q. Has Mr. Phillips told you anything about meeting with the Humboldt Fibre Company? A. No, sir.

Q. I wonder if Mr. Phillips is out there right now?

MR. PHILLIPS was called in:

Q. Mr. Phillips, do you mind answering another question? What about that letter to the Humboldt Fibre Company?

Mr. Phillips.—I wrote a letter to the Humboldt Fibre Company.

Q. And didn't you write a letter to the Humboldt Fibre Company on or about February 4? A. I have written within the past four or five months.

Q. And to the Humboldt Fibre Company? A. Yes.

Q. On how many subjects did you write to the Humboldt Fibre Company? A. How many subjects?

Q. Yes. A. Well, I should think it would be on only one subject. I told you I took their proposal down to Morgan's.

Mr. Moss.—Was that the one you took down to Prindle?

A. Yes.

Judge Swann.—Now, that was accepted, wasn't it?

A. Yes.

Q. And what was it for? A. Cotton linters — bleached linters.

Q. Now, how did you know that Morgan wanted this particular line of stuff? A. I will explain that by stating that was one of the many rumors and steers that I acted on, and I went down and asked for Mr. Pringle and took the proposal with me. Afterwards I took the manufacturer down and introduced him to Mr. Prindle.

Q. Now, just shortly before the time that you took this letter or proposal from the Humboldt Fibre Company down to Mr. Prindle of J. P. Morgan & Company, didn't you notify in writing, on your own signature, the Humboldt Fibre Company of a certain cablegram that had been received by J. P. Morgan & Company from the French Government, asking J. P. Morgan & Company to buy that specific line of goods? A. That is a question that I am going to look into my files and answer correctly this afternoon as to just what I wrote.

Q. You say you can't recall that you called that very fact to the attention of the Humboldt Fibre Company? A. I did not say that I did not call their attention to it.

Q. To the fact that J. P. Morgan & Company wanted that particular line of goods — now, didn't you call their attention to that particular fact? And I will tell you furthermore that we have the statement of the Humboldt Fibre Company very frankly to that effect, that you called their attention to that fact, and I want to tell you, furthermore, that they have surrendered your letter to J. P. Morgan & Company, who have in turn exhibited it to me. A. I want to understand just exactly what it is.

Q. Either the letter is a forgery or it was yours, and I am going to ask you very plainly about it and tell you just what the Humboldt Fibre Company says, that you wrote them a certain letter, which they have received and which they in turn have turned over to J. P. Morgan & Company, and that letter purports, sets forth the exact copy of a cablegram received from the French government by J. P. Morgan & Company, and the Humboldt Fibre Company say that you were the first person that called their attention to the fact that J. P. Morgan & Company had received that order, or any order whatever, from the French government for that particular line of goods. A. Well, I am unable to answer whether I am the first or not. I have the Humboldt Company's letter, I think, in which they tell me what Morgan & Company have received or wired to them. Now, whether I am the first or not, I am unable to say.

Q. Now, what did you receive from the Humboldt Fibre Company or any officer thereof as the result of having given that information in regard to that particular line of goods from J. P. Morgan & Company? A. For giving them that information?

Q. Yes, or in connection with that contract. A. Well, I am presumably to get a commission for taking Mr. Jarrell, the president of the company, down to Morgan's office and introducing him to Mr. Prindle after I had made that 'bald-headed' proposal to Mr. Prindle.

Q. What were you to get from Mr. Jarrell or from the Humboldt Fibre Company for those services? A. I think that I was to get a quarter of a cent a pound.

Q. On an order of how much? A. I was going to say one hundred twenty-five — I don't believe that is correct. Without having access to the records that would show, I believe it is one hundred seventy-five tons. I believe that is it.

Q. Have you gotten the check? A. No.

Mr. Schuster.—Will you divide that commission with any one outside of your associates?

A. No, sir — just five divisions.

Judge Swann.—Where did you get the information that you conveyed to the Humboldt Fibre Company?

A. Where did I get the information?

Q. Yes. A. What information do you refer to?

Q. Well, whatever the information was. You say you can't recall having told them or written them of any cablegram received by J. P. Morgan & Company from the French Commission or the French government, ordering J. P. Morgan & Company to buy a particular line of goods and stating the top price they would pay for them. Now, what information did you convey to the Humboldt Fibre Company in regard to that line of goods that Morgan & Company wanted? A. I should say in regard to that, I probably got the information from Mr. Prindle, whatever I gave them. That is, I talked with Mr. Prindle in regard to submitting a proposal.

Senator Towner.—From whom did you get the information that he is asking about, from whom before you submitted the proposal to Mr. Prindle?

A. That I can't say. I might have heard that, Senator, from a dozen different people.

Q. No, but do you recall from whom you got the information; have you got any records in your office that would disclose that?

A. No.

Judge Swann.—Well, do you mean to testify that you conveyed to the Humboldt Fibre Company merely a rumor that Morgan & Company wanted this stuff and that in consequence thereof, they made a bid to J. P. Morgan & Company?

A. No, I do not mean to say that, because I took Mr. Jarrell down and introduced him.

Senator Towner.—What occasion had you to take Mr. Jarrell there?

A. Because Mr. Jarrell was in New York looking for a contract of that kind.

Q. And you haven't now any information that would disclose the reason for your getting in touch with Morgan? A. No. I

explained that I went down to Mr. Morgan's looking for Mr. Pringle and was advised there was no such party there, that there was a Mr. Prindle there.

Judge Swann.—What is the address of the Humboldt Fibre Company?

A. Humboldt, Tennessee.

Q. How many letters did you write during January and February, 1916? A. I am unable to say.

Q. Did you write more than one? A. I can't tell you correctly whether I ever wrote them even one.

Q. Do you have any record of having written the Humboldt Fibre Company a letter at all? A. I have undoubtedly written them various letters.

Q. But did you write a letter on that particular date? A. I can't say. I should say a few.

Q. Approximately—you can guess at it within ten years, can't you? A. Yes.

Q. Well, now, guess the nearest you can. A. Well, I should think my letters would date from somewhere in December. I think Mr. Jarrell was up here in December.

Senator Towner.—Of what year?

A. Of last year.

Judge Swann.—December last?

A. Yes, sir, I think somewhere near that.

Q. What is your best recollection of how many letters you have written to the Humboldt Fibre Company since last December? A. Well, I might have written—this is only a guess—I might have written a dozen.

Q. Well, of course, you might have written a dozen or any number, but what is your best recollection? A. I have no recollection of any definite number.

Q. Well, have you any recollection of ever having written them a letter? A. Not on any specific date, no, but I certainly must have written them letters.

Q. Have you any recollection of writing them letters since December last? A. Not of any particular letter.

Senator Towner.— But since last December?

A. Yes, I have stated I have.

Judge Swann.— Now, what is your best recollection of the number of times that you have written them since December first last — to the best of your recollection?

A. Well, my best recollection would be a guess of a dozen.

Q. And what subject were they on? A. On cotton linters, bleached linters.

Q. Was each letter on that subject? A. That is all I had up with the Humboldt Fibre Company — bleached linters.

Mr. Moss.— What are bleached linters? A. It is the short fibre that comes off the cotton seed, and it is nitrated and used in explosions, powder, etc.

Mr. McQuisition.— How do you spell it?

A. L-i-n-t-e-r-s.

Judge Swann.— Now, will you look and see if you haven't got a letter written approximately on February 4?

A. Yes.

Q. In which there was stated specifically all that I have asked you was set forth.

Mr. McQuisition.— I would like to ask a question, Mr. Chairman. Just for what services was this one-fourth of a cen a pound to be paid?

A. For introducing Mr. Jarrell, president of the Humboldt Fibre Company, to J. Pierpont Morgan's office.

Q. And I suppose for the contract going through? A. Well, of course, if you get a contract through —

Judge Swann.— Now, you only had what you regarded as a "bald-headed" acquaintance with one man in the Morgan office?

A. No, I didn't even have a bald-headed acquaintance at first.

Q. And you were to get one-fourth cent? A. Yes.

Q. You haven't received it, have you? A. No.

Q. And yet the Humboldt Fibre Company have been paid by

J. P. Morgan & Company for the whole of that contract, haven't they? A. I don't know. As I understand it, the contract is to be finished in July, so they haven't paid them, of course.

Q. Haven't you been interested enough in that one-fourth cent a pound to find whether they have been paid? A. Yes.

Mr. Moss.—Did you understand it was to be paid in July?

A. No, the contract was to be finished in July. As I recall it, it was twenty-five tons a month for three months and a hundred tons in July. Of course, you don't get any money from those contracts except when they are paid for.

Judge Swann.—Now, who was in on the one-fourth cent?

A. Mr. Seymour, Mr. Hills, Mr. Sulzer, Mr. De Witt and I.

Mr. Schuster.—Any one else?

A. No, nobody else interested at all.

Q. Do you know of anybody who has made any application for a share of any one part of that commission? A. No.

Judge Swann.—What do you think about this, Mr. Phillips? You as a broker having brought the parties together and they having signed a valid contract and the parties themselves being financially responsible, did it ever occur to you that you were therefore immediately entitled to your compensation?

A. I didn't understand it so, no.

Q. In other words, you have finished your work, haven't you? All that you can do has been done. You have brought together the responsible parties. They have signed a valid contract, and there is nothing else for the broker to do. Now, isn't he entitled to this commission? A. He may be entitled to it, but that is not customary in this war business. You can get your money as the goods are shipped.

Q. Now, since February, at least two months, maybe three. you haven't received anything at all, have you? A. Absolutely nothing.

Mr. Schuster.—Was any money paid down as an advance payment? A. That I have no knowledge of. Oh, you mean paid to me?

Q. No, I mean paid to the manufacturer. A. I have no knowledge of that.



Judge Swann.— Do you know how the money is to be paid? A. No.

Q. You didn't know Morgan & Company paid before the goods left America? A. Well, I certainly presume they were paid before they left America. I don't think they were shipping to the other side.

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### EXECUTIVE SESSION.

(Second.)

May 19, 1916.

Called to order by Senator Thompson at 3 P. M.

O. B. PHILLIPS on the stand:

Examination by Judge Swann:

Q. Mr. Phillips, what was the "grape-vine" source of information that you had for obtaining information from J. P. Morgan & Company in regard to munition contracts and orders? A. The term "grape-vine" to me simply means information that you get here and there. It comes to you through several different channels. That is a Western expression that I knew from my boyhood.

Q. Now, is that the only explanation you have of that? A. Yes, sir.

Q. And then when you wrote to Mr. Jarrell, giving him the latest from the grape-vine, that is what you mean, is it? A. Yes.

Q. And you meant to give Mr. Jarrell, the president of the company, only guessing information or rumor; is that all? A. That is all.

Q. What did you mean when you spoke to him about your guardian angel in the office of J. P. Morgan? A. I have no recollection of ever saying that.

Q. Did you ever use the expression, your "guardian angel"? A. It seems to me that never in my life have I used that expression.

Q. Do you know a Mr. Prescott of the Anglo-American Products Company? A. I do not.

Q. Do you know Mr. Rupreck? A. I do not.

Q. Have you refreshed your memory as to whether or not on February 4th, specifically February 4, 1916, you wrote to Mr. Jarrell, of the Humboldt Fibre Company, a letter disclosing the contents of a cablegram just received by J. P. Morgan & Company? A. I searched our files very carefully and found no reference to it, and I have no recollection of thus writing.

Q. Did you ever state that their method of procedure was to inform their guardian angels, meaning yourself and Sulzer and Frederick Seymour, about these matters? A. Never.

Q. Did Sulzer ever state to any customer that his information was derived from "our guardian angels," meaning yourself and Seymour and Hills? A. Never.

Q. Sulzer, Phillips and Frederick Seymour? A. No, never, Judge Swann.

Q. Did you write to Mr. Jarrell on February 4, 1916? A. I have no recollection of writing Mr. Jarrell.

Q. Didn't you write most of your letters on the letter paper of Seymour & Seymour? A. I couldn't find any letters that I had.

Q. Didn't you and Hills and Sulzer and Frederick Seymour write all of your letters, practically all of them, in regard to munitions contracts, on the letter heads of Seymour & Seymour? A. I believe, Judge Swann, that what few letters have been written, most of them have been written on the letter heads of what is known as the National Cartridge and Machine Company, which was nothing more or less than a paper company which never went any further.

Q. Did you ever tell the persons with whom you were dealing that "We have a pull and influence with Morgan's office," and when asked who "we" referred to, you said Seymour & Seymour, yourself, Hills and Sulzer? A. I believe that I never made such a statement in my life.

Q. Did you ever tell the Humboldt Company that you were the confidential representative of J. P. Morgan & Company, and that that company did not care to enter into any negotiations direct in a preliminary way, but the final negotiations would be direct with them, but preliminary negotiations would have to be entered into with you? A. I have no recollection whatever of making such a statement.

Q. Did you receive a letter of March 22, 1916, from the Humboldt Fibre Company telling you that they had discovered that you were not the confidential representative as you had pretended to be and as you had represented yourself to be? Did you receive such a letter from them? A. Well, at this moment I am unable to say. I would prefer to look that up.

Q. You say you testified to the Committee here that you have no recollection of having received a letter from the Humboldt Company accusing you of having misrepresented to them? A. Yes, I should answer that way, because I never represented to them.

Q. That isn't my question. Did you receive such a letter from them? A. I cannot answer intelligently, because I have no recollection of having such a letter.

Q. Do you mean to say that an accusation by a big company like that against you of false representation in the words that I have used would have no impression upon your memory so that from March 22d to this present day you couldn't remember it? A. You haven't had much experience in war business or you wouldn't be surprised at any statement that might be made.

Senator Towner.—Did you ever have it questioned by the firm that he speaks of?

Judge Swann.—The Humboldt Fibre Company.

A. No, sir.

Q. At any time did they ever accuse you of falsely representing to them that you were the confidential representative of J. P. Morgan & Company? I am reading from their letter to you. A. To me?

Q. Yes, to Frederick Seymour, stating that Phillips had stated this to them. Did Frederick Seymour ever show you a letter written March 22, 1916, to him, by the Humboldt Fibre Company, in which they stated that you had made those representations to them and they had discovered them to be false? A. I can't say whether I saw such a letter or not, because that thing was of so little importance that I do not recall.

Senator Towner.—Did you ever hear it in substance?

A. Never.

Judge Swann.—Would you think that that accusation was of so little importance that it wouldn't live in your memory?

A. I should pay no attention to that. I didn't make such a representation. When I know I am right, I don't care what a man says.

Q. But wouldn't you recollect that they told you in writing you lied? A. Well, I tell you I would not be very much disturbed about what manufacturers who were seeking war orders might say.

Q. Well, how about the people that negotiate with them? Do they transact business upon these lines of principle, or lack of it? A. I am unable to say. I speak for myself only.

Q. Now, we will get right back to that letter to Mr. Jarrell in which you gave him information through the grape-vine, which you had received through the grape-vine. Is that your letter? (Hands letter to witness.) A. I am unable to answer you intelligently, because that is not my writing.

Q. Well, the signature? A. The signature looks like mine. I am not prepared to say whether that is my signature or not. That letter was not written by me.

Q. The signature is what I want. A. The signature resembles mine.

Q. Well, Mr. Phillips, don't you know that is your signature? A. I answered your question, Judge Swann. I am not at this moment prepared to deny or affirm that that is my signature. The letter I did not write.

Q. What is your best impression as to whether or not that is your signature? A. It looks like my signature.

Q. Well, don't you believe it to be your signature? A. It looks like my signature.

Senator Towner.—I would like to ask you a question. Do you know whether or not it is your signature?

A. It looks like my signature.

Q. No, but do you know whether it is or not? A. No, I don't actually know.

Q. Then the answer is, you don't know? A. Well, I don't wish you to crowd me into that position. It looks like my signature.

Q. I say, do you know whether it is yours or not? A. Mr. Chairman, what should be my position there?

Senator Thompson.—Simply say you don't know.

A. It has certain resemblances.

Senator Towner.—My question is, do you know whether it is or not?

A. No, I don't know at this moment whether it is my signature or not. I do wish to say positively I did not write the letter.

Q. I am not asking about the letter. You say you do not know?

Mr. Moss.—Did you read the letter?

A. Yes, sir.

Q. Did you ever see that letter before? A. Never.

Q. Do you say that positively? A. I do at this moment, honestly and with as complete recollection as I have.

Q. Is there nothing in that letter which is familiar to you? A. Let me see it again, please. Well, of course, the reference to the grape-vine is miscellaneous information, that everybody dealing with these has had.

Judge Swan.—Mr. Phillips, didn't you receive an answer to that letter from the person to whom it is addressed?

A. I do not know.

Q. You don't know. Then I will read you this, handed to me by the person to whom that letter is addressed, and says that it is a carbon copy of his reply to you, written from Tennessee:

“Mr. O. B. Phillips, % Seymour & Seymour, Equitable Building, New York City:

Your letter of the fourth inst. has been received and duly noted. I have read with much interest the latest grape-vine information on the lot of fibre we hope to furnish J. P. Morgan & Company.

It appears that the proposition continues to be a live one, and for your information will say that on the date of the

fifth we received a letter from J. P. Morgan & Company, reading as follows: "

and then setting forth copy of their letter. Does that refresh your memory as to whether or not you received that letter? A. It does not.

Q. Will you say that you did not receive a reply to that letter from the Humboldt Fibre Company? A. At this moment I will not say or affirm whether I did or not. I have no recollection.

Q. Did you look for your letter from the Humboldt Fibre Company? A. I looked for the letter of February 4, which you asked me for.

Q. The Humboldt Fibre Company have, after writing Mr. Seymour that letter accusing you of false representations, refused to pay you that one-fourth of one cent, haven't they, and notified you to that effect? A. I believe not.

Q. Didn't they notify you that they wouldn't pay it? A. I believe not.

Q. And didn't they tell you that the reason they refused was because you had falsely represented you were the confidential agent of J. P. Morgan & Company? A. I believe not.

Q. Have they ever paid you a cent? A. No.

Q. Have you ever taken any action to enforce your claim? A. Yes, we have written repeatedly, and there was a letter from Mr. Jarrell saying that the goods had not reached seaport yet and therefore there was nothing to remit.

Q. You didn't receive any notice from him saying that he wouldn't pay you under any circumstances? A. Wouldn't give us that one-fourth of one cent — no.

Q. Mr. Frederick Seymour — is he a lawyer or broker? A. He is a lawyer.

Q. Wasn't he constantly in communication with these persons whose names have been brought out here by telegrams, letters, etc., in regard to the war munitions? A. I don't know how familiar Mr. Seymour was with it.

Q. Now, weren't letters written indifferently to you or to Mr. Seymour in regard to this, even in answer to your own letters, in answer to these various letters from manufacturers of munitions? A. Well, I presume so, but I don't speak with any

accurate knowledge on that point. I shouldn't be surprised one way or the other, so far as that is concerned.

Q. Did you hear Mr. Seymour also refer to munitions manufacturers and speak to them about grape-vine information which you are receiving and he was receiving from J. P. Morgan & Company? A. No.

Q. Never heard of that? A. No.

Q. How about Mr. Sulzer, did you ever hear him speak of the guardian angel and of the association with J. P. Morgan & Company? A. Never.

Q. Did you on March 3, 1916, telegraph to Mr. Jarrell, the president of the Humboldt Fibre Company, notifying him of an order which Morgan had just received? A. I don't recall it.

Q. You don't recall it. I want to say to the Committee that I haven't had time to read over these papers and I am only asking about them. Now, after Mr. Jarrell — A. Just a moment, please. I have spoken to the Chairman that as soon as it is possibly convenient, I would like to get through, because I have a personal matter to attend to.

Mr. Moss.— We will be through in a short time.

Judge Swann.— I won't detain you five minutes more. After you gave various pieces of information, never mind what they were, to Mr. Jarrell and after Mr. Jarrell had entered into a contract and was delivering the materials to J. P. Morgan & Company, did you then approach Mr. Jarrell and say to Mr. Jarrell to get aboard of the slush fund, to see that the French inspectors did the right thing by Mr. Jarrell, and that you were raising the slush fund for the purpose of paying the inspectors of the French government?

A. Never.

Q. And did Mr. Jarrell tell you that his company intended to furnish material in the exact order of contract, and refused to contribute to the slush fund? A. Never.

Q. And did you state to Mr. Jarrell, "Very well, perhaps your material will get by then, but I don't think it will?" A. I did not.

Q. When I say that, I mean that or words to that effect? A. No.

Q. And did you also say that unless the inspector was taken care of that he would no doubt refuse to issue a proper certificate? A. I did not.

Mr. Moss.—Are you going to show the witness the letter containing the translation of the cablegram?

Judge Swann.—The cablegram is pinned to it. Now, did you ever see this cable —

Mr. Moss.—The cablegram is not a part of the letter, it is pinned to it.

Judge Swann.—Yes, but he says he has no recollection of ever having written a letter. I show you copy of a cablegram received by J. P. Morgan & Company, February 1st, 1916, from the Minister of Finance of France. Did you on or about February 4 have any information in regard to the contents of that?

A. I have never seen that before.

Q. Did you have any information as to its contents? A. This is my first knowledge of it.

Q. Then you have no recollection of having written the letter?

A. No, sir.

Mr. Moss.—I will read the letter.

“Equitable Building, N. Y.  
Seymour & Seymour,  
Corporation & Patent Lawyers.

February 4, 1916.

Dear Mr. Jarrell:

It occurred to me that you would like to have the latest from the grape-vine and beg to quote from their letter as follows:

The latest information we have regarding cotton linters offered by the Humboldt Fibre Company is that the government have requested samples, and they are inclined to accept the offer, provided quality is suitable.

They are also asked to cable at once how the Humboldt samples compare with a previous sample sent them, and a



reply to this was sent out last night, recommending that they make the purchase, that the samples were of better quality than the previous samples submitted.

Yours very truly,

O. B. PHILLIPS."

Date stamped on the bottom in purple ink, "February 7, 1916." Attached to this letter, which is on one sheet, attached by a pin, is another paper, typewritten, as follows:

"COPY 54.

NEW YORK, *February* 1, 1916; 7:30 P. M.

Fram Harjes, Ministere Finances, Paris.

"16493-11772. French Government request you send as soon as possible, samples of bleached cotton linters offered by Humboldt Fibre Company and Demopolis Cotton Mills (stop)"

Judge Swann.— That is the period. That is the way the cable means period.

Mr. Moss.—

"French Government is inclined to accept these offers, provided quality suits them. How does above-mentioned cotton compare with samples sent us per your letter of January 14? Please cable U. S. Navy specifications of bleached cotton linters.

HARJES,

Ministere of Finances."

This is written on a half-page of plain paper, which apparently has been cut off at the bottom by an irregular cut, and has no handwriting on it whatever, and has no other pin marks than the pin marks made by the pin which is in it now.

Judge Swann.— Did you ever hear of that letter before?

A. I never did.

Q. You never did? A. I have no recollection of it whatever.

Q. And you never received or saw an answer or reply to that letter from Humboldt? A. I don't recall any.

Q. Whose handwriting is that in? A. I do not know.

Q. Look at it again.

Mr. Moss.—Have you any opinion as to whose handwriting it is?

A. No, I have not.

Q. Does it look like any handwriting with which you are familiar? A. No, it doesn't.

Judge Swann.—Now, don't you know it is De Witt's handwriting and the signature is yours?

A. I do not. I don't even know that this is De Witt's handwriting. (Letter is handed to witness.) I think Mr. Frederick Seymour could identify the handwriting of the body of that February 4, 1916, letter.

Mr. Frederick Seymour.—I don't know the handwriting.

Q. The body of the letter? A. I don't know.

Q. In whose hand writing is the signature, "O. B. Phillips?"

A. I don't know that. I haven't seen these signatures frequently. I haven't carried on any correspondence with them.

Q. Then you say that you don't know whose handwriting the body of that letter is in and you can't identify the signature of Mr. Phillips to that letter. Is that right? A. I am not familiar with Mr. Phillips' writing.

Q. All right. Look at this letter purporting to be from Mr. De Witt and tell me whether you recognize that handwriting. A. I do not. I am not familiar with their handwriting.

Q. Now, Mr. Seymour, when you were associated with them many months, daily and many times per day in these efforts to place munition contracts, didn't you see their handwriting? A. I have talked with them frequently, but I have never carried on any correspondence with them.

Q. Well, I have what purports to be letters and telegrams, probably thirty of them, in this file on those various subjects, referring to the very subjects mentioned in those letters, and purporting to be signed by you. Now, do you think there are many letters and telegrams sent by you on those subjects? A. Several letters and telegrams were sent by me?

Q. Well, were you not in direct contact with Mr. Phillips?  
 A. I have talked with him frequently, but I have had no occasion to observe their handwriting.

Senator Thompson.—Whose handwriting is the body of this letter in?

Mr. Phillips.—I do not recognize it.

Judge Swann.—Neither of them know, although if you will look at De Witt's letter and that, you haven't the least doubt whose it is.

Mr. Moss.—If they don't know the writing of De Witt, that doesn't signify that it isn't De Witt's handwriting.

Senator Thompson.—O. G. De Witt—who is that?

Mr. Moss.—He is one of the others. He is outside. Mr. Phillips, you are here voluntarily and if you will come whenever we ask you, we will relieve you. (Mr. Phillips leaves the room.)

Judge Swann.—Now, Mr. Seymour, did you have any grape-vine information from J. P. Morgan & Company?

Mr. Frederick Seymour.—I have no information of any kind except what I have had from Mr. Phillips.

Q. Who was the grape-vine? A. I don't know anything about that. I suppose the grape-vine is a designation of brokers. That is all I know about it. I have no information about it.

Q. Did you on January 14, write to Mr. Jarrell as follows: "For your confidential information, I may add that J. P. Morgan & Company are authorized to buy four hundred tons per month," and if so, where did you get your information? A. Any information I had, I had from Mr. Phillips. I signed some letters that were dictated by Mr. Phillips and maybe this is one of them. I am not sure.

Q. Well, who was the dominating mind in these transactions? A. I had nothing to do with the actual negotiations.

Q. Now, I want to call your attention to the fact that many of these letters were addressed directly to you, Mr. Frederick Sey-

mour, and many of them addressed to Seymour & Seymour. Isn't that a fact in regard to these war munitions contracts? A. It is.

Q. Now, Mr. Seymour, did you have any clients, in your capacity as attorney and counselor-at-law, for whom you are acting as attorney and counselor-at-law in regard to war munitions, or were all your negotiations those of broker only? A. I had some clients.

Q. Well, who were they? A. I can not state now.

Q. He refuses to state. Now, couldn't you merely state the name of your client without conveying any confidential communications and privileged communications? A. I don't think it is fair to me to bring my clients in.

Q. That wouldn't bring them in. I want to differentiate Frederick Seymour, broker, from Frederick Seymour, lawyer. A. I can say this, that my clients are known to J. P. Morgan & Company. They know who they are.

Q. Well, we are a little outclassed by J. P. Morgan & Company financially here. I haven't any doubt but what these gentlemen would like to know.

Mr. Moss.—For my part, as this is a voluntary matter, if Mr. Seymour wants to protest at this time, I don't desire to push him.

Judge Swann.—Would you think merely naming his clients would be a breach of privilege?

Mr. Moss.—Well, I wouldn't force that. If this matter reaches a point, Judge, where we take testimony before the public, it would be a different situation. The whole thing may be changed then, but we are looking for information and are getting it voluntarily now.

Mr. Frederick Seymour.—I will say this, Judge, that I am in confidence with my clients, with Mr. Summers, Mr. Catchings and Mr. Bacon of J. P. Morgan & Company. They know whom they are.

Judge Swann.—You can answer me this, because I am asking Frederick Seymour, broker, now. You are interested, of course, in that contract with the Humboldt Fibre Company?

A. I don't know anything about Mr. Phillips and his associates, but I have heard that they were interested in that. They were at liberty to consult me, and I was to get one-fifth of what they received in the way of brokerage.

Q. Didn't you write on the letter head of Seymour & Seymour to Mr. Jarrell, of the Humboldt Fibre Company, and speaking of "we" in regard to the contract? A. I presume so.

Q. Now, gentlemen, I will read over these very carefully. Now, didn't the Humboldt Fibre Company make the contract for paying one-fourth cent per pound on the bleached linters directly with Seymour & Seymour and nobody else? Didn't they make the contract with your law firm, Seymour & Seymour? A. They addressed a letter to me.

Q. Isn't that the contract? A. I don't think it is the contract that was finally made, but it may be.

Q. Do you know of any other contract? A. No. My recollection is that there is a subsequent one in which the commission was five-sixteenths instead of a quarter, and the other sixteenth went to Mr. Sophio, who introduced Mr. Jarrell.

Judge Swann.—Now, gentlemen, I will have to get out too.

Mr. Moss.—Well, we will run ahead on this line.

Judge Swann.—Now, I will read these over. I haven't been able to read them very carefully. In fact, I have just glanced at them.

Mr. Moss.—Have you, Judge Swann, on your papers any of the reports of the listening-in?

Judge Swann.—None whatever. I have never seen them or heard of them.

Mr. Moss.—That, of course, after all is what we are particularly interested in.

Judge Swann.—I am going to ask De Witt to identify the letter signed by him.

MR. DE WITT is sworn:

Judge Swann.—Mr. De Witt, I show you a letter dated February 4, 1916, to Mr. Jarrell, and purporting to be signed by

O. B. Phillips. Now, will you tell me in whose handwriting the body of that letter is?

Mr. De Witt.—That is mine, sir.

Q. And whose handwriting is the signature. A. Well, it looks like Phillips'.

Q. Well, have you any doubt of it? A. No, I would take it for his signature.

Q. Now, do you recall the letter? A. I might if I read it.

Q. Yes, just read it.

(The letter was handed to the witness, who read it.)

A. Yes, I wrote it.

Q. You wrote the letter. Now, do you remember the circumstances? A. I wrote it at Mr. Phillips' request.

Q. At his dictation? A. Well, not exactly dictation. He told me about what he wanted said.

Q. What does the grape-vine refer to? A. That I don't know. That is Mr. Phillips' entirely.

Q. What did you take it to be? A. I took it to mean possibly that he had heard it somewhere.

Q. And did you ever hear of their "guardian angel" in the office of J. P. Morgan & Company? A. No, sir, I did not.

Q. Do you know anybody in the office of J. P. Morgan & Company, even a speaking acquaintance with anybody there? A. About a year ago I met Mr. Follis, Mr. Stenny's secretary. My experience with him was not pleasant and I have never talked with him again.

Q. Do you know anything about this (cablegram)? A. I never saw that.

Q. Did the grape-vine tell you what the contents were? A. Nobody ever told me anything about it.

Senator Lawson.—Tell us what this refers to, Mr. De Witt, please, if you will.

A. Well, I suppose possibly that refers to some cotton linters that were offered by the Humboldt people, as I see here, but I never saw that paper.

Q. Was that any part of the letter that you prepared in your dictation from Mr. Philips? A. Absolutely not.

Judge Swann.—Read the body of that letter and see what the grape-vine said. Read what the grape-vine is alleged to have told the writer.

A. Why, that the government have requested samples and they are inclined to accept the offer, provided quality is suitable.

Q. And do you know what that referred to? A. Why, linters from the Humboldt Fibre Company.

Q. Yes, I know, but what government? A. I don't know.

Q. It didn't refer to the United States government, did it? A. I didn't think that.

Q. What government did you think it referred to? A. I supposed it was for the French government. I don't know.

Senator Lawson.—How does that appendix conform or relate to the subject of the letter?

A. Why, it says they are inclined to accept these offers provided quality suits them.

Judge Swann.—Isn't that practically the same thing? Isn't that the same sense?

A. Yes.

Q. In other words, the grape-vine information happened to be just what the French government said to J. P. Morgan & Company, if that copy attached is the correct translation of it? A. If it is, yes.

Q. Now, you don't know how the grape-vine told Mr. Phillips that information? A. I don't know.

Q. And you don't know who the grape-vine is? A. No, sir.

Q. It must be crooked if it is a grape-vine, don't you think? A. Well, the grape-vine is inclined to turn, yes.

Senator Thompson.—Who employs you, Mr. De Witt?

A. Nobody. I am not employed by any one.

Q. What is your business, then? A. My regular business is the hotel business.

Q. How did you happen to be the man who wrote these letters?

A. Simply because they think I write a better hand than they do.

Q. What was your connection in the office of Seymour & Seymour? A. Simply five of us together in a sort of mutual understanding arrangement to do brokerage business.

Q. Who were the five? A. Frederick Seymour, O. B. Phillips, William Hills, Jr., and Mr. Sulzer and myself.

Q. You all work together? A. Working together.

Q. How long have you been with them? A. About a year — nearly a year.

Q. And what is the nature of your business? A. Any kind of brokerage business that we can get hold of.

Q. What have you got hold of? A. This seems to be the only contract that has gone through.

Q. What is that? A. This cotton linters.

Q. The one to the French government? A. It went to Morgan.

Q. That is the only contract which you have consummated? A. That is the only one.

Q. And were you interested in any other contract that has passed? A. Well, yes, we had a contract for finishing some shells for the Canadian Car and Foundry Company. That is the only other one.

Q. This contract mentioned was one that the money was paid through J. P. Morgan & Company? A. Was paid?

Q. Yes. A. I don't know that it has been paid. I haven't seen any of it.

Q. At least, the contract requires it to be paid through Morgan & Company? A. I don't know what the contract is. I have never seen the contract nor any of the details. In fact, it was a matter that was entirely outside of me, except writing those letters.

Q. Now, is there anybody else that had desk-room in your office except those five men? A. No, sir.

Q. Or occupied your office to any extent? A. No, sir.

Q. And you are all interested in this one thing? A. Yes, sir.

Q. That is, your interests are identical? A. Yes, sir.

Q. And have you any clerks or stenographers in your office? A. Mr. Seymour has a clerk and a private secretary, but those are not in connection with us at all.



Q. Those are the only clerks or secretaries you have in the office? A. Yes.

Q. Have you had any one in the office that was connected with the Russian government or the French government, or extensively so? A. Not to my knowledge.

Q. Or any other government except your own? A. No.

Q. Or any representative of any government? A. No representative of any government as far as I know.

Q. Just you five men, with the other Mr. Seymour, the stenographer and the clerk? A. We are the only ones that have been in there at all in connection with this business.

Q. (Mr. Moss).—Have any come in to see you from any government?

A. No direct representative. We have had lots of brokers who said they were.

Q. The brokers that belonged to the town here? A. Yes.

Senator Thompson.—You had nobody that held himself out to be the representative of any government?

A. No, sir.

Q. You five men were all working under a mutual agreement to profit by any contracts that you could consummate with these warring governments—is that the idea? A. With anybody who would buy. We have got some matters up now with people that have nothing to do with governments or munitions or anything at all. We all expect to profit by them if they go through.

Q. Were you ever led to suspect that your work was of such importance that you would have public officials pry into what you were doing? A. Never suspected that.

Q. What is this grape-vine? A. I don't know.

Senator Lawson.—Is he a man?

A. I don't know.

Senator Thompson.—Do you rely for information on what somebody says?

A. We have to rely on hearsay a great deal, simply because we can't get it any other way.

Senator Lawson.—Do you imagine this grape-vine was an employee of the J. P. Morgan & Company?

A. No, sir.

Q. Who was the grape-vine? A. I don't know.

Q. Was it any one of the five of them? A. I couldn't say. My information comes from the others. As I say, I have had no active part in this particular transaction at all, except writing these letters.

Q. You never saw a grape-vine? A. No, I never did. Oh, I have seen a grape-vine, but not that sort.

Q. I mean this particular grape-vine.

Senator Thompson.—This grape-vine seemed to be interested in getting information that comes from the office of J. P. Morgan & Company.

A. You know, the air is full of rumors about that. I was in an office about a year ago, in February, I think, and there was a gentleman there who said, "I am very much interested in railroad ties. I have got several millions that I can deliver within a year, and I understand that Morgan wants them and I would like for you to go around and ask them if they are interested, because I would like to supply them." I went around and they told me, "We don't deal with brokers." I said, "This isn't a brokerage proposition. The president of the company asked me to come over and ask you if you were interested." They said, "We are not interested now."

I went back and told the man and I said, "What is the use? If they are not interested, I am not going to put in any bid," and that was dropped.

Q. Could you consult the grape-vine and find out what the rumor was? Could you get that information through the grape-vine? A. No, that came to me from the president of the company, who wanted to offer his ties.

Senator Thompson.—That is all, I think, unless somebody else has some questions. Will you send in Mr. Sulzer or Mr. Hills?

A. Yes. (Leaves the room.)

Mr. Moss.—Mr Seymour, I wish you would tell us about any dispute or financial discussion you had with Morgans over any of this business

Mr. Frederick Seymour.—I never had any discussion with Morgans.

Q. Wasn't there some financial difficulty over there? A. Over this letter business?

Q. Over this or some other business, something regarding the payment. A. No. The only discussions that I had with Morgan or his representatives has been with reference to clients in which Morgan was interested.

Q. Well, wasn't there a difference of opinion as to the amount of money that should be paid? A. Under those contracts?

Q. Under those contracts or some others? A. No.

Q. I understand, Mr. Seymour, that there was some matter of dispute or discussion where you didn't agree — you and Morgan. A. I never had any disagreement with the Morgans at all, but there was a contract which the Morgans let and my clients were sub-contractors under that contract. There was a failure to perform on time that gave cause of action for damages. That was settled and a new contract was awarded. That is the negotiations which were carried on. Morgan was interested in it because he was interested not only in the main contract, but in seeing that all sub-contracts were carried out. It was in that connection that I was in conference with J. P. Morgan's representatives. Otherwise, I had never had any conference with them at all.

Q. Well, wasn't there something growing out of that matter which may have given the Morgans reason for looking into your office? A. No, I think not.

Q. Well, I wanted to settle that matter. Is the other Mr. Seymour outside? Your brother is out there, isn't he? (Other Mr. Seymour is sent for.)

Senator Thompson.—Did you people have a company or were you just associated together by agreement?

Frederick Seymour.—No, there wasn't any company or association. They rented a small room. We had a little suite and they

said something to me now and then that they would give me one-fifth of any brokerage that came in.

Mr. Moss.—Is there any other questions we want to ask Mr. Hills? We had him before recess.

Senator Thompson.—This is Mr. Hills?

Mr. William Hills, Jr.—Yes.

Q. What I want to ask you, is there anybody else in your office except you, the two Seymours, Mr. Sulzer, Mr. De Witt and Mr. Phillips, the secretary and stenographer of Mr. Seymour? Is there anybody else there or has there been in the last six months in that office? A. No. Of course, they are coming in and going out all the time.

Q. But anybody that is there at all permanently, stay there, sit there — just somebody in to talk to you, we will leave them out — but anybody that has a sort of familiarity with the place? A. No, sir.

Q. Was there anybody there that came in the office, so far as you know, that pretended in any way to represent any government? I don't mean a broker that is trying to broke something. A. No, sir.

Q. You are the people that occupied the office, the ones I have named? A. Yes, sir.

Q. I understand that you and Mr. Phillips and Mr. Sulzer and Mr. Seymour and Mr. De Witt were rather associated together, the five of you? A. Yes, sir.

Q. And that the only contracts that you had anything to do with was one in which the Morgan firm was interested and which went through them, and one that went through the Canadian Car and Foundry Company? A. That is all.

Mr. Hills was excused and requested to call Mr. Sulzer.

Mr. SULZER was sworn.

Mr. Moss.—Mr. Sulzer, you come prepared to make a frank statement of anything you know, don't you?

Mr. Sulzer.—I have.

Q. Well, I want to say to you that while District Attorney Swann is not here at this minute, he has been here and he is interested in this inquiry and I give you the usual caution about speaking in a place where things you say may be used against you if the matter should so turn; and if at any time you don't want to answer, just say so. Otherwise, I shall assume that what has been said about your willingness to talk goes.

There has been produced here by Judge Swann a letter which Mr. De Witt said he wrote and which has underneath it a signature that looks like the handwriting of Mr. Phillips, in which he writes to the Humboldt Fibre Company, suggesting some business in cotton linters, and there is attached to it what purports to be copy of a cablegram from the Minister of Finance of France, indicating their desire for material that Morgans have furnished. Did you ever see in that office, the office of Seymour & Seymour, any copy or alleged copy of any cablegram or alleged cablegram of that character? A. I never did.

Q. Did you ever hear of one? A. I never heard of one.

Q. Was such a thing discussed between you? A. Only after the Humboldt people had received their order.

Q. After the Humboldt people had received their order, what discussion was there? A. Oh, just in a general way. We knew that an authorization must have come for their product.

Q. You don't understand, and it is very natural that you shouldn't under the circumstances. What I am asking you about is a cablegram that belonged to Morgan and was from the French government. Do you know that there was any such cablegram or copy in the office of Seymour & Seymour or in the office that you occupied? A. No, sir.

Q. Now, this letter written by Mr. De Witt in reference to the grape-vine, speaks of information that was received from the grape-vine. Did you ever hear the term used? A. I have heard it used, yes.

Q. Who used it? A. Well, probably Mr. Phillips. I could not say positively. It might have been Mr. Phillips.

Q. Well, what did you understand by the grape-vine? A. Well, I don't know. Ordinarily we would term a grape-vine to be general information that we have.

Q. Yes. General information of a rather mysterious character? A. Information that we don't know where it comes from.

Q. Well, didn't you really want to convey to the Humboldt people the idea that you knew what you were talking about, that you had information upon which you could bank? A. Well, I personally had very little to do with that transaction.

Q. Well, didn't you understand that was the way the letter was being written, so that they would have an idea you could do some business? A. I never saw that letter.

Q. Well, you know it was discussed? A. No, sir.

Q. Well, you knew they were written to? A. Oh, yes, indeed.

Q. And that they were written with the idea of doing business with them? A. Oh, yes.

Q. What did you say to the Humboldt people, or rather, what did you hear said to the Humboldt people or any of them which would give them the idea that you would be able to give information of what the Morgans wanted? A. I went into the office. It wasn't for the purpose of doing business with Morgan, it was for private concerns. Later, the subject was brought up of taking a contract with the Morgans, and at that time I had nothing to do with the business with the Morgans whatever. I mean I had nothing to do with the negotiations.

Q. Then you were trying to handle the Humboldt business in other quarters? A. Yes, previous to that.

Q. Did you succeed in any business for them? A. No.

Q. Were you ever in the Morgan office? A. No.

Q. Did you ever know anybody in the Morgan office? A. No, sir.

Q. Did you ever see anybody, to your knowledge, that belonged to Morgan & Company? A. No.

Q. Did you ever see any information coming into your office that had been in the Morgan office? A. No.

Q. What contracts went through, as far as you know, out of your office? A. A contract concerning the machining of some shells from the Canadian Car and Foundry Company and made by the Consolidated Car Heating Company of Baltimore. That was the only one aside from this one.

Q. So far as you know, were deliveries to be made anywhere outside of this country? A. In this Canadian contract, I don't really know what was done. The Consolidated Car Heating Company removed them to their factory and I don't know what became of them.

Q. Is that a Canadian company? A. Well, their offices are in New York, but I presume it is a Canadian company.

Q. Where were the goods to be delivered under the Morgan contract? A. With the lintors?

Q. Yes. A. Well, I don't really know. I presume in New York here, and from here to France.

Q. You thought they were destined for France? A. Yes, so far as I know.

Q. Did you know of any goods going through your office or going through contracts that your office was interested in, that were destined for Mexico or intended to get into Mexico? A. Absolutely none.

Senator Thompson.— These shipping directions had to be given by Morgan and firm?

A. Yes, sir, so I understood. I really hadn't anything to do with it.

Q. What did you contribute to the five people? I understand there were five people interested in this brokerage business: yourself, Mr. Hills, Mr. De Witt, Mr. Frederick Seymour and Mr. Phillips. You five were interested? A. Yes, sir, that is right.

Q. What was your asset? A. Well, I don't know what particular asset I had. I did my best to contribute to whatever transactions were made.

Q. What did you turn your mind to? A. Well, I didn't have any special department. There was no special department to which I was assigned.

Q. What did you do? A. Well, I took part in a general way in the negotiations with the Consolidated Car Heating Company.

Q. You talked with the factory people or the people that were to buy? A. Yes, sir.

Q. Now, who in the combination was the fellow that got the word from the grape-vine? A. Well, generally speaking, it would be Phillips.

Q. Phillips would be the fellow who knew where the grape-vine was and could go and get the juice? A. As far as negotiating with Humboldt and Morgan, I really have no knowledge of it.

Q. Who is Humboldt? A. Well, it is the Humboldt Fibre Company.

Q. Where are they located? A. Humboldt, Tennessee.

Q. And they made this cotton stuff? A. They made cotton linters, yes.

Q. And the cartridge things, what concern made them? A. What cartridges?

Q. I understand there was an unfinished order of cartridges? A. Oh, the machining of shells. Well, that was supplied by the Canadian Car and Foundry Company. It was a sublet order from the Canadian Car and Foundry Company to the Consolidated Car Heating Company. It was merely a domestic situation entirely.

Q. I see. Those are the only two contracts that you really consummated? A. Yes.

Q. And the brokerage is paid out to you by the people to whom you give the contract? A. Yes.

Q. You get a brokerage on both ends? A. No, in this case we get it from the Consolidated Car Heating Company.

Q. And in the Humboldt case, from the Humboldt people? A. Yes, so I understand. I have not seen them.

Q. I see. Now, was there anybody else in that office except you five and the other Mr. Seymour and his secretary and stenographer — anybody that was located there? A. No.

Q. Aside from the transient visitors that would call in? A. No.

Q. Was there anybody who came to the office that pretended to be a representative of any government — our government or any foreign government? A. No.

Q. Your idea of this grape-vine information was that in some mysterious way that information was more or less correct as to the real facts in the J. P. Morgan office? A. Well, brokerage information, as a rule, isn't very correct.

Q. I know, but that is what you thought? A. And this we took with the same credit, about.



Q. But that is what you mean by grape-vine, that is hearsay among brokers? A. Yes.

Q. It travels from one broker's lips to another's until you get it, and instead of calling that hearsay, you say that is from the grape-vine? A. Yes.

Senator Lawson.—Then, as far as you know, the grape-vine doesn't mean any particular man?

A. No. It is just a term, really.

Senator Thompson.—“Mrs. Grundy” says so and so — merely a rumor. Of course, the nearer correct you can get grape-vine information, the better off you are. You can get a sale for that information.

A. Very seldom the party that actually wants to buy will have anything to do with you at all. It is generally a rumor that you get.

Mr. Moss.—Now, Mr. Charles Seymour, I want to ask you if there was at any time any dispute or difference in opinion or any financial uncertainty between your people and the Morgan people?

Mr. Seymour.—Not that I know of. There was no dispute.

Q. Well, call it what you will — any place in which you didn't agree on any financial matter. A. We had a big settlement going on there, on a breach of contract, but I don't know the relations.

Q. That I want to get at. You say a big settlement. How much did it involve? A. I don't know, but I would say \$300,000.

Q. Yes. And what was the claim? Who was to pay that \$300,000? A. Whatever was paid was to be paid by our client.

Q. To whom? A. To the opposing party.

Q. And what did Mr. Morgan have to do with it? Whom did he represent? A. He had an interest in that opposing party.

Q. In the opposing party? A. Yes, a control of the company, as I understand it. My brother says I am not right on that. Why don't you let him testify about that?

Q. I know, but I don't seem to be getting any information.

Mr. Frederick Seymour.—Morgan & Company let a contract to Company A. Company A let it to my client, which was Com-

pany B, to do that work. My client fell down. There was a claim for damages. The controversy was between Company A and our client, but Morgan & Company were interested in both the contracts that failed and in the making of the new contract, because they had to cancel the one and let the other.

Q. What was the result of it? A. The final result was a settlement and a new contract.

Q. Was money paid on the settlement? A. Yes.

Q. As much as was demanded? A. No.

Q. Considerably less? A. Considerably less.

Q. How much less? A. Well, about a hundred thousand dollars.

Senator Thompson.—How much was demanded?

A. Two hundred and eighty thousand dollars.

Mr. Moss.—You said when you were on the stand that this tapping might have been done by one of two parties. Who did you mean? This is private.

A. I thought at one time that it might have been done in behalf of the company with whom we were going to negotiate for settlement to see how far we would go.

Senator Lawson.—Did Morgan & Company lose the \$180,000?

A. Not at all. They were not at all interested.

Mr. Moss.—Can you imagine any reason why the Morgan Company should have tapped your connection?

A. In connection with that business?

Q. In connection with anything? A. In connection with any of it — no, I cannot, unless it is in relation to this linters contract here. I have heard what has been said about that now.

Senator Thompson.—The information was coming from their office by way of something called a grape-vine, and if you were getting it in your office, of course, they would be interested in finding it out.

A. Yes, sir.

Q. But when was this settlement going on? A. Why, it was

going on during the latter part of March and in the early part of April.

Q. When was this tap on your office? A. I don't know. I heard there was on on April 3d. That is the date.

Q. If you got that from the grape-vine, you got it pretty good, because it was tapped on the first. A. Well, it came into my office, as I remember it, on April 3d.

Mr. Moss.—Well, the detective who did the work may have preceded the police tap.

Senator Lawson.—Mr. Seymour, did you have any suspicion that anybody was listening-in on your telephone?

A. Not until after it happened.

Q. O'Farrell's men came in — what did they do? A. They came in and said that our wire was tapped and there was a dictaphone there.

Q. And did they give you any information that had been gleaned over the wire? A. No, they did not. They didn't know anything about it. They just knew it had been done.

Q. What, if any, conclusion did you come to as to why your telephone wire was tapped? Did these contracts come up in your mind right away? A. Not at all. I didn't think it was possible.

Mr. Moss.—Now, before we excuse you two gentlemen, I would like to have either one of you to whom the thought occurs give any reason why this tap might have been made. You have suffered the inconvenience and annoyance of having your wires tapped. I remember when you were put on the stand first, how you felt about it. It is a natural desire to find out who is responsible for it. Now, testimony has been taken from persons who might know anything about it, and it would appear from our information that Mr. Morgan's office was the cause of this tapping. Have you any thought or reason why this was done other than the reason alleged, that they were following what looked like a leak from their own office?

Mr. Frederick Seymour.—I don't know of any possible reason.

Mr. Schuster.—How long had you known Mr. Phillips?

A. I had known Mr. Phillips about a year.

Q. Did you know anything about him prior to that? A. Why, I inquired about him. He had a very good reputation.

Q. Was he located here in New York some years prior to his joining you? A. Yes, prior to that he was.

Q. What had been his business prior to coming with you? A. He had been in the war brokerage business for some time and prior to that he was quite active in politics, particularly during the last presidential campaign.

Q. In Oneida county or New York? A. In New York county.

Q. How long have you known these other associates? A. About the same time.

Q. Did they find you or you find them? A. They found me.

Q. They came to you; and did they represent that they had contracts which they could place? A. They represented that they thought they could place contracts.

Q. You have no written contract? It was simply an understanding? A. None at all.

Senator Thompson.—Did you ever hear of this grape-vine business?

A. I have occasionally heard the word used.

Q. What did it denote to you? A. It denoted to me some line of information that was indistinct and perhaps correct, sometimes probably so.

Q. Gossip? A. Gossip.

Q. Street gossip — brokers' gossip? A. Yes, mouth-to-mouth.

Mr. Shuster.—Did you place any confidence in information that came through the grape-vine?

A. I never did.

Senator Thompson.—You say Mr. O'Farrell came and told you on the third of April this was happening?

A. Yes.

Q. And when was it you made a search for the detectaphone? A. Right then.

Q. When did you find it? A. We never found it.

Q. There wasn't a hole in the wall? A. No. Well, there was a hole through which a telephone wire ran when that room was

occupied together, temporarily. There was no indication of any other wire going through there.

Q. Do you think it is true that the representative of the Burns Detective Agency occupied the room next you? A. I only have O'Farrell's say on that, and he says it is so.

Q. What do you think about it? A. There were some suspicious circumstances.

Q. Do you think it is true your desk was opened and your correspondence taken out? A. I never saw any indication of it in my room, but that is affirmed vigorously by O'Farrell's men.

Q. What do you think about it? A. I never saw any indication that the papers had been tampered with on my desk, and I don't think there was any especially important correspondence that I had there. There were some legal papers that we had partly finished, nothing that would interest other people that I know of.

Q. The only contracts that got anywhere near contracts were these two that have been mentioned? Is that correct? A. Those were the only contracts that were made.

Q. Were there any goods being made or in the process of manufacture at all? A. Well, there were others where I was acting as counsel for manufacturers.

Q. The manufacturing part of it — would they come through this? A. None of them came through Phillips or his associates.

Q. I know, but were they sub-contracts from Morgan & Company? A. Some of them were directly with the government.

Q. What government? A. One was with the Spanish, another with the French.

Q. I mean within the last six months? A. No, I think none of them.

Q. These were the only two within the last six months? A. I think so.

Q. These last two, there were the only munitions contracts within six months, either you or your firm or any of the five had anything to do with? A. No, those contracts that I had with others were munitions contracts.

Q. That was with Morgan? That was the Humboldt contract and the one where delivery was to be made to the Canadian Car

and Foundry Company — those were the only ones within the last six months? A. No, there was another one. I think it was within the last six months. It was a transfer of a contract with a manufacturer from an individual to J. P. Morgan & Company.

Q. Those were the only ones that were made that possibly went through your office? A. Yes.

Mr. Moss.— I think these two gentlemen can be excused.

MR. COLEY, superintendent of the Equitable Building, was called to the stand and sworn:

Mr. Moss.— What is your full name?

Mr. Coley.— Clarence T. Coley.

Q. Mr. Coley, do you know anything about the installing of a detectaphone in the office of Seymour & Seymour? A. No, sir.

Q. Who would know? A. Mr. Burns.

Q. Why do you say that? A. Well, I can tell you best by just stating what I know. I was introduced to Mr. Burns, the detective, and told to do what I could to assist him in carrying out of certain work that he had to do in the Equitable Building.

Q. Who introduced you to him? A. Mr. Mortimer, president of the Equitable Corporation.

Q. Just tell us what he said. A. Mr. Burns stated that he wished to look over the office next door of Seymour & Seymour, and I let him in the building one evening — the date I can not tell — and allowed him to enter the office adjoining Seymour & Seymour. After that, he asked to look into the office of Seymour & Seymour. I showed him in the office. We all left the building. A few days later he asked me if I had a man that could show him the electric circuits of the buildings. I said "Yes" and I introduced him to our electrician. That is all I had to do with the case.

Q. That is all you know? A. Yes.

Q. What was the electrician's name? A. Kalb.

Q. Did Kalb report to you? A. No, sir, I instructed Kalb to do as Mr. Burns asked him to do.

Mr. McQuiston.—Did you provide him a method of getting into Seymour & Seymour's office?

A. Yes, sir.

Mr. Moss.—Was he there nights?

A. Not to my knowledge.

Q. Only there in the daytime? A. I know nothing of Mr. Burns' movements after I provided him with the key to get in.

Q. Then he had the opportunity and privilege of going in whenever he felt like it? A. Yes.

Senator Thompson.—He had a master key to the Seymour office?

A. He had a key, not a master key.

Mr. Moss.—He had a key to the Seymour office and a key to his own office?

A. What do you mean, his own office?

Q. Wasn't there an office provided for him next door? A. Not that I know of.

Senator Thompson.—Did you give him a key to anybody else's office?

A. To the room next door.

Q. And that is all? A. Yes.

Q. Did you have anything more to do with it? Have you any other information about this Burns man? A. Nothing at all.

Mr. Moss.—I think that we ought to save him and put that outside.

Senator Thompson.—All right.

MR. COLEY was excused and MR. SMITH was sworn:

Mr. Moss.—What is your full name?

Mr. Smith.—Bartlett Smith.

Q. Where is your place of business? A. We are at 42 Broadway now.

Q. You and your father are the inventors or proprietors of a detectaphone? A. Yes, sir.

Q. Did you recently sell a detectaphone to Mr. Burns, the detective? A. No, sir, he has always had seventy-three of his own on hand.

Q. Oh, he has an interest in it? A. No, he has no interest in it, but he bought seventy-three machines outright.

Q. He has your machines? A. Yes.

Q. Did you recently have some conversation with him regarding the machines? A. Not recently.

Q. When did you talk to him about some improvements you had? A. Why, we have never improved upon the detectaphone at all.

Q. Did you show him how to work it in some way? A. He has always known.

Q. Did you have a conversation with him recently about the matter which resulted in going down to the Equitable Building? A. No, sir.

Q. Did you furnish a machine that was taken down there? A. No, he furnished his own machine. There were two machines he has had there. He has had a telephone tap and he has had the detectaphone.

Q. I mean both of them. Tell us anything he said that led you to go down there. A. Why, he telephoned to my father about some telephone taps, and my father immediately went down there and Mr. Burns bought it.

Q. The telephone tap? A. Yes, sir.

Q. What is that? A. That is an instrument for tapping on telephone wires.

Q. That can be done right down there? A. Yes, sir.

Q. Did you go down in connection with the telephone tap? A. No, sir.

Q. Who did? A. I don't know. All I did was to show Mr. Creighton, of Mr. Burns' office, how to do it, down at Mr. Burns' office. That is as far as I know.

Q. You showed how to work the tap? A. Yes, sir.

Q. Did you ever go down to the Equitable Building? A. Yes, I put in the detectaphone, or helped to.

Q. And was that put in the office next to Seymour & Seymour? A. Yes.



Senator Thompson.—When was that, about?

A. March, I think, the latter part of March. I couldn't tell you the exact date.

Mr. Moss.—Well, who did you find when you went down there?

A. Why, I went to Mr. Burns' office first, and then I went on down with Sherman Burns and Jimmie Lynch.

Q. That is his son, isn't it? A. Yes. Sherman. When I got down there, I found that Jimmie Lynch had tried to go through the wall to Seymour's office and he couldn't get it through, and with one little twist of the bit I put through the rest of the hole, and Jimmie Lynch tacked the transmitter to Seymour's room while I connected the wires from the other room.

Q. And what time of night was that? A. That was about 8 or 8.30, I think.

Q. Did you do anything with the machine after it was put in? A. We tested it out.

Q. Were you ever there after that time? A. Yes, I went down there twice. They tried to wire up the room farthest away from the room that we had already wired up, but I couldn't get through the wall because there was a steel girder there, so that ended me there.

Q. Did you see anything done in the way of getting messages at any time? A. I saw Mr. Burns open the desk of that farthest room and take out some papers.

Q. That is, the Seymour office? A. Yes. I saw him open the drawer.

Q. Which Mr. Burns? A. William J. And I saw them bring them into the room where we were and he dictated them to Jimmie Lynch, and he took them down in shorthand.

Q. Was that in the night-time? A. Yes, the second time.

Q. Did they say anything in your hearing about having gotten any messages? A. No, sir.

Q. Was there anything said about the telephone tap? A. No, I didn't know it was on there. I didn't know it was connected. The only thing was, I surmised they were going to connect that machine up, because Mr. Seymour's wires led into the room where Mr. Burns had his office. He asked me if these were the wires

he could tap and I found they went to Mr. Seymour's room, to his telephone, and I told him so.

Q. How does this telephone tap work? A. Why, it is a box about that big (measuring about a foot square with hands), and it is connected up with the telephone wires and it is brought into any part of the room you want it. All you do is, you plug in and you can listen.

Q. You can do that in a modern office building? A. Certainly.

Senator Thompson.—Did you make a tap on the telephone?

A. No, sir.

Q. Why not? A. Mr. Burns wanted me to do it and my father told me not to do it, because it was a felony, so I showed George Creighton how to tap onto the wire.

Q. You showed him how to do it? A. Yes, sir.

Q. It was possible to make the tap with your machine on that wire? A. Oh, sure.

Q. And you could get a hole through? A. We didn't have to go through his room, because their wire came right out into this room.

Adjournment into public session.

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**MAY 19, 1916.**

**PUBLIC SESSION.**

Called to order at 4.40 P. M. by Senator Thompson.

CLARENCE T. COLEY was called to the witness stand and  
sworn:

Mr. Moss.—Are you the janitor of the Equitable building?

A. I am the operating manager.

Q. Were you recently introduced to the detective, William J. Burns? A. I was.

Q. Who introduced you to him? A. Mr. Mortimer.

Q. Who is Mr. Mortimer? You mean Mr. George T. Mortimer, the president of the board of directors of the Equitable?  
 A. He is president of the Equitable Office Building Corporation.

Q. Oh, yes. What did he say to you when he introduced Mr. Burns to you? A. He said, "This is Mr. Burns. Do what you can to assist him."

Q. That is all Mr. Mortimer said? A. Yes.

Q. What time of day was it when he said this to you and what day was it? A. It was in the afternoon. I can't tell you what day or what date.

Q. Then what did you do? A. I talked to Mr. Burns.

Q. What did he say to you? A. He said that he wished to investigate one of the tenants in the building. "Will you meet me to-night and allow me to enter the office?" which I did.

Q. What time of night was it? A. About eight o'clock.

Q. Did you give Mr. Burns a key? A. The next day.

Q. Was that the office of Seymour & Seymour? A. It was.

Q. When you took him into the office on the first day that you saw him, what did he do? A. Just looked around generally for a few moments and left.

Q. I suppose the occupants of the office had left at that time?  
 A. No one was there.

Q. He looked it over, left, came the next day and got the key?  
 A. Yes.

Q. Well, what next happened? Please relate in your way all that happened? A. He came again later and asked for a key to the office next door.

Q. To Seymour & Seymour? A. Yes. I gave him that key. He came again later and asked me if I could show him relative to the wiring construction. I introduced him to our electrician, Kalb. I told Kalb to do what he could to assist Mr. Burns.

Q. And did Kalb go with Mr. Burns? A. He left my office.

Q. Did he ever report what he had done? A. No, sir.

Q. Did you ever observe anything he had done? A. No, sir.

Q. Did you pay any more attention to the matter? A. No, sir.

Q. That is all you knew about it? A. Yes, sir.

Senator Thompson.—When was it?

A. I don't recollect the date. I would assume that it was in the early part of March.

Q. How long did he keep the key? A. He still has it.

Q. Both keys? A. Yes.

Mr. Moss.—When did you see Mr. Burns last?

A. Four or five weeks ago.

Q. You haven't seen any representative of his office? A. No, sir.

Q. Was that William J. Burns? A. William J. and his son?

Q. So you saw them both? A. On the first occasion, only William J. On the entering of the office, both.

Q. Did you see them both enter the office yourself? A. Yes.

Q. Who opened the door when they went in the office the first time? A. I.

Q. Who opened the door when they went in the second time? A. I didn't see them only once. That is all.

Q. Where is Mr. Kalb? A. I presume in the building.

Q. Send him up, will you? A. I telephoned and asked him to come.

Mr. Coley was excused and Mr. SMITH was called to the stand:

Mr. Moss.—What is your first name?

Mr. Smith.—Bartlett Smith.

Q. Your place of business is 42 Broadway? A. Yes, sir.

Q. And what is your business? A. The manufacturer of detectaphones and interior telephones.

Q. And you are in business with your father? A. Yes, sir.

Q. Is your father an inventor? A. Yes, sir.

Q. (By Senator Thompson).—What is your father's name?

A. Gaillard.

Mr. Moss.—Do you know William J. Burns?

A. Yes, sir.

Q. Did you ever sell him any detectaphones? A. Yes sir.

Q. About how many? A. Seventy-three.

Q. Did you ever sell him any detectaphones? A. Yes, sir.

Q. What else did you sell him? A. Telephone tap.

Q. What is a telephone tap? A. It is an instrument for tapping a telephone wire without a switchboard girl knowing it.

Q. Now, do you mean to say that there is an instrument which you have sold to Mr. Burns by which a telephone may be tapped without having to go through the office of the telephone company? A. Yes, sir.

Q. And can that be done in a modern office building? A. Yes, sir.

Q. And is it done in modern office buildings? A. Yes, sir.

Q. How many telephone taps did you ever sell or supply to Mr. Burns? A. One. We have only made one and sold one.

Q. And when did you sell this to Mr. Burns? A. Well, I couldn't say. The latter part of March, I think.

Q. Did he tell you what he wanted of it? A. No, sir.

Q. Did you ask him what he wanted it for? A. No, sir.

Q. Did he tell you where he was going to use it? A. No, sir.

Q. Do you know where it was used? A. No, sir. I do now, but I didn't then.

Q. Where was it used? A. In the Equitable building.

Q. In the office of Seymour & Seymour? A. I suppose so.

Q. Were you ever in the office of Seymour & Seymour in the Equitable building? A. Yes, sir.

Q. Who took you there? A. William J. Burns, Sherman Burns, and James Lynch, a stenographer.

Q. When did you enter Mr. Seymour's office with these persons? A. About 8.30 at night, I should judge.

Q. Eight-thirty at night? A. Between 8 and 8.30.

Q. Do you remember what floor it was on? A. The twenty-seventh.

Q. Do you remember the number on the door? A. No, sir. The room we had was formerly the Belgian Relief.

Q. The Belgian Relief was next door to Seymour & Seymour? A. Yes sir.

Q. And did you see the name, "Seymour & Seymour," on the door of Seymour & Seymour's office? A. Yes, sir.

Q. When you entered the office of the Belgian Relief, who did you find there? A. Sherman Burns and James Lynch came down with me the first night.

Q. Sherman let you in? A. Yes, sir.

Q. He had a key and let you into the Belgian office? A. Yes, sir.

Q. Now state all that was said and done while you were in the Belgian office? A. When I first got there, Jimmie Lynch pointed out a small hole in the wall he had made and he said he couldn't get through, so I immediately took a brace and bit and took one turn of the brace and it went through.

Q. It went through into Seymour & Seymour's office? A. Yes, sir. And then they unlatched the lock on our door and we immediately entered into Seymour & Seymour's office.

Q. Well, did you enter Seymour's office from the Belgian office or from the hall? A. From the Belgian office.

Q. How did you get through? A. Why, the lock on their side was open and all we had to do was to turn the lock on our side and we could walk right in.

Q. Now, who walked into that office? A. Sherman Burns unlocked the door and he walked through and he came and unlocked the second door from their side, and then I unlocked it from our side and we started to work.

Q. You both went in there? A. Yes, sir.

Q. Did Lynch go in too? A. Yes, sir.

Q. All three, then? A. Yes, sir.

Q. Where was William J. Burns then? A. He came down about nine o'clock.

Q. And did he enter the Seymour room? A. Yes, sir.

Q. What did you do when you opened the Seymour & Seymour room? A. Put a detectaphone in.

Q. A detectaphone. And where did you put it? A. Behind the table.

Q. In Seymour & Seymour's office? A. I think it was in the elder brother's room, nearest the office.

Q. You mean the brother with the stubby mustache or the brother with the smooth face? A. I couldn't say.

Q. Was it Frederick? A. I couldn't say. They told me he coughed a whole lot, that is all I know.

Q. Who told you he coughed a lot? A. Jimmie Lynch.

Q. Did Jimmie Lynch tell you how he knew he coughed a lot? A. He could hear over the detectaphone.

Q. Well, is this detectaphone an instrument which you place in a secret place in an office, which is a delicately adjusted instrument, so that it registers in some way the conversation in that office, and that conversation is transmitted over a wire into an adjoining office, where the conversation can be heard by someone who is eavesdropping? A. Yes, sir.

Q. Well, did you see the wires put through the hole which had been put in the wall? A. Yes, sir.

Q. You helped put the detectaphone behind the table; and on that first occasion, were these wires all connected up so that the detectaphone would work? A. Yes, sir.

Q. And was it tested? A. Yes, sir.

Q. Who tested it? A. Why, Mr. Burns and I listened while Sherman went all around the room talking.

Q. You mean William J. Burns? A. Yes, sir.

Q. William J. Burns and you listened in the Belgian office while Sherman Burns walked around in different parts of the office of Seymour & Seymour, talking, and it was adjusted so that you could hear Sherman in any part of the room. Is that it? A. Yes, sir.

Q. What time did you get through with that operation? A. Oh, about half-past nine.

Q. What did you do then? A. I went home.

Q. Now, the next occasion — when was that? A. That was the next night.

Q. The very next night. A. Yes, sir.

Q. Did anyone go down with you that night? A. Sherman and Jimmie Lynch.

Q. Just tell what happened? A. I tried to get through another part of the wall.

Q. You mean to say you tried to bore through? A. Yes, sir.

Q. You entered the Belgian room first and you tried to bore through another part of the wall. What was the purpose of that? A. To get two wires in.

Q. Well, did you succeed? A. No, because a steel girder cut you off, so that was all I did that night.

Q. Yes. Well, did you see whether anything had been done with the wires? A. No, sir.

Q. Anything more than you have testified to? A. No, sir.

Q. Did you go into the office of Seymour & Seymour that night? A. Yes, sir.

Q. Who else went into the office? A. William J. Burns went into the office of Seymour & Seymour that second night.

Q. Did you see him do anything? A. Yes, sir.

Q. What did you see him do? A. He opened the desk in the farthest room and took out some papers and brought them in to the Belgian Relief office and dictated their contents to Jimmie Lynch.

Q. That is, he went to the desk in the furthest room of the suite of Seymour & Seymour and opened the desk? A. Yes, sir.

Q. How did he open the desk? A. All that he had to do was to push the cover back and open the drawer.

Q. Was it a roll-top desk? A. Yes, sir.

Q. When the top was thrown back, then, everything was released? A. Yes, sir.

Q. And did he search the desk? A. Yes, sir.

Q. Go through all the drawers? A. Yes, sir.

Q. How many papers did he take out of it? A. He took out a handful of small cards and some other papers.

Q. Was that done with any care — pretty carefully? A. Yes, sir.

Q. So that they could be put back without attracting any suspicion? A. Yes, sir.

Q. Had you ever done anything like that with Mr. Burns before? A. No, sir. That was my first experience.

Q. Now then, did you see William J. Burns take papers that he took out of the desk in the Seymour room into the Belgian room? A. Yes, sir.

Q. Was that desk in a room occupied by one of the Seymour brothers, as you understood, the man that coughed or the other man? A. I don't know which one it is. It is the farthest one. The nearest one is the one that coughs.

Q. The nearest one is the coughing man and this was the farthest. Well, farthest from what? A. From the Belgian Relief room.



Q. Was this a small room? A. Well, the room is really one large room, but it is partitioned into three small rooms.

Q. And they run one, two, three, and this was the furthest room from the Belgian room? A. Yes, sir.

Q. Is there a sign on the Belgian door yet? A. No, sir.

Q. Do you remember the number? A. No, sir. It was on the right as you stand in the hall.

Q. Well, did you hear William J. Burns dictating? A. Yes, sir.

Q. What did you hear him dictating? A. I heard him dictating names off the cards.

Q. What else did you hear? A. That is all.

Q. Do you remember any names that you heard him dictating? A. No, sir.

Q. Who took the dictation? A. Jimmie Lynch.

Q. Did he take it in shorthand? A. I think so. I am not sure.

Q. Did any of those gentlemen, Lynch or any of them, tell you anything that had transpired? A. No, sir.

Q. Did they tell you whether any conversations had been heard? A. Why, yes. They told me that the girl got a whole book of notes, but that is all they told me.

Q. That is, the girl in the Burns' main office had received a whole book of notes? A. Yes. I think her name was Miss Murray.

Q. Yes. And she had a whole book of notes taken down on the detectaphone? A. No, by Jimmie Lynch. She was in the room alone in the morning and Jimmie Lynch came down later.

Q. Do you know Miss Murray? A. I think I know her.

Q. Do you know her to be connected with Mr. Burns' office? A. Yes, sir.

Q. Did you ever see her? A. I think I have.

Q. Now, with regard to this telephone tap, did you instruct Mr. Burns how to use it? A. I instructed Mr. Creighton.

Q. In the first place, how big a thing is it? A. A box about this big, eight by ten inches, I should say.

Q. And what do you do with that? A. Just tap it on the telephone wire and when you get a signal, you plug in and listen.

Q. Well, you have to go into an adjoining room? A. Yes, so it isn't seen.

Q. That is, if you go into a room where you can control a detectaphone, you can expose the telephone wire of the man you are spying on and tap this thing on? A. Yes, sir.

Q. Cut into the circuit and listen? A. Yes, sir.

Q. What does the mechanism consist of? A. Why, two condensers, relay drop and a receiver.

Q. Did Mr. Burns ask you to operate it? A. Yes, sir.

Q. What did he say to you? A. Why, the first time I went down there, he said, "I have some work for you to do," and I asked him what it was and he first took me down to the Equitable Building with Sherman. That was before I started work, and I looked over the ground down there, and then I came back and he asked me if I wouldn't do this work for him. He didn't mention any tapping of telephone wires, but I surmised that when he got the machine, that was what he wanted me to do.

Q. Had you sold him the tap before he went down to this office? A. Yes, sir.

Q. And before this office business was spoken of? A. Yes, sir.

Q. Well, you didn't want to do this? A. No, sir.

Q. Why not? A. My father said it was a felony.

Q. And so you wouldn't do it? A. No, sir.

Q. But you told him how to do it? A. Yes, sir.

Q. Did he ever tell you whether he had done it or not? A. No, sir.

Q. If it is once put on, does it leave any trace? A. No, sir. Well, it leaves a cut in the wire, that is all.

Q. But that can be mended? A. Yes, sir.

Q. What effect does it have upon the wire? A. No effect.

Q. Well, it takes current, doesn't it? A. Yes, sir, but the condensers eat up the excess current.

Q. So that it leaves no trace? A. No, sir.

Q. And for that reason a person doesn't know the wire is tapped? A. No, sir.

Senator Thompson.—And the telephone company wouldn't know it either?

A. No, sir.

Mr. Moss.— Did you see that tap fixed?

A. No, sir.

Q. Did you hear afterwards that it had been used? A. No, not until I came up to Mr. Swann's office.

Q. You were at Mr. Swann's office recently and you heard some statement made, did you? A. Yes, sir.

Q. And what statement did you hear with regard to that? A. That the tap was in use down there.

Q. That the tap was in use? A. Yes, sir.

Q. Who said that the tap was in use? A. I couldn't tell you.

Q. Didn't William J. Burns say the tap was in use? A. I don't know.

Q. Now, wait a minute. You said you heard it down there. A. I couldn't tell you who said that.

Q. Who were talking when you heard it said? A. This was outside of the room.

Q. Was Judge Swann there? A. No, sir.

Q. In Judge Swann's office, it was stated so that you heard it? A. No, I didn't say Judge Swann's office.

Q. You heard afterwards that it had been said in Judge Swann's office that the tap machine had been put on? A. Yes, sir.

Q. So we may assume that the district attorney of New York county knows that fact? A. Yes, sir.

Q. And that William J. Burns knows it? A. Yes, sir.

Q. Was anything said as to whether William J. Burns had put it on? A. I don't know.

Q. Have you seen William J. Burns since that time? A. No, sir.

Q. Have you seen his son since that time? A. No, sir.

Q. Did you make a statement to the district attorney? A. Yes, sir.

Q. Substantially what you have said here? A. Yes, sir.

Q. Did you tell the district attorney anything more than this about the matter, more than you have told here? A. No, I don't think so.

Q. Did you tell him practically all that you have said here? A. Yes, sir.

Q. Did any of the Burns people tell you how they got the keys to go in? A. Except I heard Sherman state that he had rented that office, saying that he was a politician.

Q. That is the Belgian office? A. Yes, sir.

Q. Did he tell you that? A. I heard him say it.

Senator Thompson.—A politician can get an office in the Equitable Building, evidently.

Mr. Moss.—And they can get special favors from the chairman of the board, if they know how.

Q. The Equitable Building is the most modern of all the office buildings, isn't it? A. Yes, sir.

Q. And if I remember, on those signs that were all over the building just before it was rented, they promised their tenants all the protection that anybody could ever think of, ask for or dream about. Do you remember those signs? A. Yes, sir.

Senator Thompson.—I want to acknowledge the presence of Senator James J. Walker, to whom we extend all the courtesies of the Committee. I assume he is here to see if his wire has been tapped.

Mr. Moss.—Mr. Chairman, will you call the name of William Garvin.

Senator Thompson.—Is William Garvin in the room?

Mr. Moss.—Mr. William Garvin is office manager of William J. Burns' office. A subpoena server returns me word that William Garvin was served and that he refused to come over, or declined to come over. I think it is up to William J. Burns' office to explain this situation. Mr. Burns is out of town and every individual that is connected with this thing is out of the office. The office boy, or the office manager, as I call him, has refused to come over.

Senator Thompson.—He is the only one left?

Mr. Moss.—Yes. Well, I can conceive the reason why he would decline to come over when his principals are absent and things are in confusion.

Senator Thompson.—I don't blame him.

Mr. Moss.—But I think it ought to be well known that that office has been subpoenaed. I will read the names of the persons: Mr. Lynch, the stenographer, "Not there;" Mr. Garvin, the office manager, who declined to come; Frank Openheimer, operative, "Not there;" Mr. Creighton, bookkeeper, "Not there;" Mr. Wurtheimer, operative, "Not there;" Miss Murray, stenographer, "Not there;" Frank D. Keys, "Not there;" Raymond Burns, "Said to be in Cleveland;" William J. Burns, "Said to be in Cleveland." There seems to be only the manager over there and he is scared.

Senator Thompson.—Well, we haven't got time to-night to look them up.

Mr. Moss.—Oh, well, there is plenty of time. They can't run away.

Senator Thompson.—If we get in a hurry in the meantime, we will tap their wire.

Mr. Smith was excused.

Senator Thompson.—Now, this Committee in executive session have examined the members of the firm of Seymour & Seymour. That firm consisted of the two Seymours, a stenographer and private secretary. Also in the office were Mr. Hills, Mr. Sulzer, Mr. Phillips and Mr. De Witt; and they were the only persons about the office in any way that could be said to be in occupation for any length of time. The only other people were people who came in transiently and went right out, people who came in to have conferences or whatever it was. Nobody else had desk-room in the office or otherwise.

We have examined them all, and from it appears that Mr. Frederick Seymour, Mr. Hills, Mr. De Witt, Mr. Sulzer and Mr. Phillips had associated themselves together, the five of them, and had what they termed a brokerage business. Their brokerage, so far as it affected the munitions or the making of anything that could go for war material, only affected in any manner, two contracts. There were only two that ever got far enough to be

materialized into contracts or to be drawn ready to be executed into a contract or to have any portion of it made or manufactured. One of them was a contract to supply a portion of a cartridge contract to the Canadian Car and Foundry Company; the other was a contract for some kind of cotton from the Humboldt Fibre Company of Tennessee. The shipment in relation to the cartridge contract was to the Canadian Car and Foundry Company. The shipment of the other was through the firm of J. P. Morgan & Company.

Mr. Moss.—They controlled the destination.

Senator Thompson.—And they, of course, controlled the destination and made the money. The only other munitions contracts considered in the office in any way in the last six months were two others concerning which the Messrs. Seymour were attorneys, and they both were through the house of J. P. Morgan & Company, and there were no other contracts of any kind that went through that office. Therefore, there are and can be no way for any foreign complications to come up in this office and couldn't have been at any time.

Now, it happened that these five men that associated themselves together believed it their duty to give to their clients, this Humboldt Fibre Company, what information they could, and they wrote certain letters to them, among which were the letters which the district attorney has given out, and in one of those letters is mentioned the grape-vine. Now, the grape-vine seems to be a method of communication without wires. It is a sort of gossip. The witnesses explained that it was street gossip, or some said brokers' gossip.

Mr. Moss.—It is a Wall Street term.

Senator Thompson.—It passed from one broker or man on the street to another, and so when they mentioned the grape-vine, they meant that it was information that came to them through this source, the grape-vine, in a circuitous way. I know we have lots of grape-vines up in Niagara or Orleans, and they are long, circuitous things. Sometimes, if you let the product of it sit long enough, it will make you feel pretty good if you drink it.

But that is the term they use, and it seems that in this letter, which was written by one of these five men and dictated by another, the grape-vine seemed to produce certain facts which were contained in a cablegram from Paris to the firm of J. P. Morgan & Company. Now, that is exactly what has been found in a general way from that executive session of the Committee. We have examined them all.

Now, inasmuch as the Committee is in possession of these facts and as all that the Committee has contended for is this, believing that we should know, we feel that Commissioner Woods is entitled to make his statement whenever he desires before the Committee. I don't know what the commissioner thinks, but the Chairman of this Committee thinks that the only reason has been at all times that he wasn't called before the Committee before was because the Committee felt that they ought to know these facts before we went onto anything further. We have worked as hard as we could, over hours and everything, to get this information, and the only criticism we have got of Commissioner Woods at all is that he is a little impatient.

Mr. Woods was called to the stand to make his statement, but was not sworn:

Arthur Woods, Police Commissioner of New York.—Mr. Chairman, I asked for the privilege of appearing before your Committee on the question of this practice of the police of listening-in on wires because I wanted to explain fully just what that practice is, why we do it, what has been accomplished by it, and the importance of it to the public. There has been so much misapprehension about it and so much misunderstanding of the method, of the objects attained, and of the risks of doing this thing improperly, and of apprehension on the part of the law-abiding citizens that their own wires might be listened-in on and their own conversations might be spied upon, which is wholly false, that I welcome the chance to state here exactly what the situation is.

This practice of listening to conversations in regard to crime over the telephone was a practice which I found in the police department when I landed there on one fateful day a little over two years ago. It was then conducted by a certain group of

picked detectives, picked for the purpose because of their reliability and their skill at that work. The same man that was in charge then is still in charge. I think that the entire personnel is the same. It may be that there have been one or two changes.

The first question that presented itself to me when I considered as to whether we should continue this practice or not was the question that instinctively presents itself to every one when the question of overhearing private conversations comes up. This is a practice which we all instinctively object to. No one likes the idea of spying, and any spying, whether by listening-in to telephone conversations or by any other method, would be wholly and completely unjustifiable if it were done except in the *bona fide* chase after crime and criminals.

That is the point which I want to make clear first of all. This method, without exception, since I have been on this job, has been used in the pursuit of crime and criminals and nothing else; and the same method which would be utterly unjustifiable if used with reference to law-abiding citizens is in my best judgment and my firm conviction not merely justifiable but a duty when it is used to protect law-abiding citizens against crooks. For remember that our job, the job of our police department, is not merely to attack crime and criminals, it is to defend honest men. It is just as much a part of our job, and I should not permit to be used any detective method for the purpose of apprehending criminals and preventing crime if that method were in danger of infringing upon the rights of law-abiding citizens.

The question came up, Was this lawful? Did we have the right to listen over wires to conversations of crime? The corporation counsel told me it was lawful. The district attorneys of New York and Kings county told me it was lawful. One district attorney went so far as to say that if the telephone company refused to co-operate with the police department in the pursuit of crime, it would be guilty of a crime itself. What the present State Legislature, of which the Chairman of this Committee is a distinguished member, thought about it is clear. A bill was introduced to take away from the police department the right to tap wires. That shows pretty clearly that they believed that the police department now has that right, and that bill was defeated.



Senator Thompson.— That bill didn't get very far.

Senator Lawson.— I think the commissioner is a little in error on the purposes of that bill. That bill would have reduced the present statute from a felony to a misdemeanor, and that the Senate refused absolutely to do.

Senator Thompson.— About these bills, I don't want anybody to think that this Committee has got an idea what legislation ought to be, even yet, on this matter. It is important. There are two serious sides to this matter and the police commissioner is on one of them. Legislation on the subject oughtn't to be passed without a chance for a little consideration, and this bill came along the latter end of the subject. The legislation we got on the subject, as I said the other day, was drawn by a lineman of the company, I think. It certainly wasn't drawn by an officer of the company; and the bill up there was also drawn very hastily, and it not only stopped the operation of the police department, but it stopped the operation of anybody that owned a general 'phone or extension in his own room.

So there are other considerations. I think the question of legislation, even, hasn't been considered yet; although there are some things we will all agree on, you and us.

Commissioner Woods.— I know that the bill was introduced. It was reported to us that it would take away from the police department the power to tap wires. We revised it on that ground, but the bill was defeated. But I am quite ready to accept what you say about it.

Senator Thompson used the expression that some future legislation would find me on one side. Now, I am not on one side. I am just as much interested in protecting persons who are honest against having their wires listened-in on as I am to have the right to listen-in on the wires of persons that are dishonest; and I have complete confidence in stating that no wire that has been listened-in on during the time that I have been in office has been listened-in on for any other motive except the discovery of crime and the protection of the law-abiding part of this city — for no other purpose.

That is what convinced me that it was lawful. Now, the question was then, was it a valuable thing to do? I asked the inspector

in command of the detective bureau whether it was a valuable police detective method, whether it was of great value to the detective bureau in its job of protecting the city against crime. He stated that it was one of the most valuable methods that we had. He told me several cases where convictions were secured which would not have been secured if we hadn't had that method.

I remember one case was the case where Hans Schmidt was convicted of murder. In that case the listening over the wire performed most important service. It was clear, therefore, that it was lawful to do this. It was clear that it was of value. Now, the question was, could it be done so as to avoid all reasonable chance that it would work injustice to any law-abiding citizen.

Well, I tackled that right off the bat. I remember, I went down and talked to the general manager of the telephone company as to this, and told him that whereas previously requests had been sent for the co-operation of the telephone company to supervise their wires for the detection of crime, a request which had been signed by deputy commissioners, from now on, I told him, although I had the greatest confidence in the deputy commissioners, I was going to personally see and approve every such request, and that has been done. The requests have been approved by me personally.

Mr. Moss.—Have you always known yourself the grounds of the application, or have you relied upon your subordinates?

Commissioner Woods.—I have tried and in most cases inquired enough into the grounds for listening to satisfy myself that it was so, but there have been cases in which I have accepted the judgment of a subordinate as to the propriety of doing that.

Q. May I ask, did you pass upon the case of Bishop Hayes and Father Farrell, or did you rely upon some deputy? A. Bishop Hayes' wire was never listened-in on.

Q. Well, Father Farrell's, then? A. Yes, I passed on that, but, Mr. Moss, I think you had better not ask me those questions. I testified to that before the grand jury and I think I had better not do it.

Senator Thompson.—I rather agree with the Commissioner on that.

Mr. Moss.—That is the only thing I was going to ask you. No, it isn't the only thing I was going to ask you. I have two questions, and you might as well think about them both. One is, whether you passed upon that case, not by itself, I am speaking of that merely as an example; and whether you have kept the reported conversations or whether they passed into the hands of some other persons?

A. You mean those particular reported conversations?

Q. Yes, and others, but I merely used that as an illustration.

Senator Thompson.—Let him make his statement.

Commissioner Woods.—I am perfectly glad to answer that stuff.

Mr. Moss.—I will take it up afterwards, because I see I am breaking the thread of the Commissioner's statement.

Commissioner Woods.—I can knit up the thread in good shape.

Mr. Moss.—Well, let's dispose of that now.

Senator Thompson.—I think we had better take that up next week.

Senator Lawson.—If it merely requires yes or no, let him answer.

Mr. Moss.—I think it would be interesting, and I don't think it would bear upon that inquiry over there as to whether you kept the conversations you heard or whether you passed them into the hands of other persons.

Mr. Woods.—I personally passed on it as to whether the wires should be listened-in on or not. The conversations were brought to me and such of them as we deemed would be valuable if used by the special assistant corporation counsel to develop evidence of the crime we are looking for were passed on to him.

Q. To the assistant corporation counsel. And in the same line have you possession of the conversations which we assume were listened to in the office of Seymour & Seymour? A. No.

Q. You haven't possession of them? A. No.

Q. Who has them? A. No one has them.

Q. Who got them? A. I will tell you that. Our practice from the very beginning, which has not been deviated from except in this one case — well, it hasn't been deviated from at all — but our practice was, we wanted to take such scrupulous care to see to it that no improper use was made of conversations which we got in this method by listening over wires; we wanted to take no possible chance that any improper use could be given to them, so as soon as the information which they contained was acted on the paper containing the report was destroyed. They have been destroyed in every case.

And let me make clear the further fact that the people who took these conversations were not stenographers. We never took them for the purpose of using them as a matter of evidence. They were simply guides to us in the pursuit of criminals and the running down of crime. We knew that if the matter became public, as it unfortunately for the public has become public now, one of the greatest arms of detective work would be damaged and the public would suffer. Therefore, we took no chance to let this become public, and we deliberately denied ourselves, refused the temptation time after time to put the men who did the listening on the stand to give testimony, because that would reveal our system, and for that same reason we did not need stenographic accounts of the testimony, and we did not keep the rather fragmentary accounts, only bearing on the points at issue on the crime, that were handed in.

Mr. Moses.— Were those conversations reported *in toto* or in substance to Mr. Burns or any representatives of his?

A. Which conversation?

Q. Those of Seymour & Seymour. A. The conversations that were taken over the wire that led into the Seymour & Seymour office were used only by the police department. The listening-in was done by the police department. If there was any other listening-in I don't know anything about it. It was done by the police department and what was gotten was used only by the police department.

Q. Do you know if it was communicated to Mr. Burns or his deputies? A. One of the deputy commissioners handled that case.

Q. Who was that? A. Mr. Lord. I didn't handle that case in detail. We found that Burns was on that case and we used Burns in any way that we could to get from him information that might help us in hunting down the crime that we were after, and that is the whole story.

Q. Then, of course, he had known what you had discovered? A. Certainly not.

Q. But did he? A. We may have told him — that is a matter which you have to get out of him — we may have told him certain leads that we had got so that he could go ahead further on it, but I can tell you this flatly and emphatically that Burns and no outside person at any time, in connection with any of this wire listening business, got any information unless we felt that we could use Burns or whoever it might be as an aid to the police department in the public interest in running down crime.

Q. All right.

Commissioner Woods.—I want to put clearly before you, Mr. Chairman, for consideration to guide you in recommending possible legislation on this question, the difference between the criminal and the honest part of our city, and the double need of protecting the honest man and of getting after the criminal. Now, criminals have to do long-distance work nowadays. In the old times, according to my information, there were more haunts of criminals. They stayed together. They could stay together because there was no other way in which they could communicate with each other. Now, there is long-distance work by criminals and they use long-distance methods, and that is the telephone; and if you permit the criminal to continue to use the telephone and forbid the people that you hire to protect you from criminals to use it you are deliberately putting into the hands of the criminal a powerful weapon which you are withholding from the police.

Mr. Moss.—But the criminal isn't supposed to cut in. No one is supposed to keep the police from using the telephone. Aren't you a little mixed on that?

A. No, Mr. Moss, I don't think I am mixed. Since you know that the criminal uses the telephone to communicate with over long distances, you are allowing him to do a thing which you are

refusing to the police, because the only way in which you can be protected from the crime which goes on over the telephone is by having the power to cut in on that crime.

Q. What do you say about a telephone tap used by criminals? Do you know of such an invention, a telephone tap used by criminals? A. What you probably mean is that it is possible to listen-in over a telephone wire by climbing up over house-roofs and burrowing around in various places until you find actually the wire which is supposed to lead to a certain receiver, and by scraping off the insulation and clamping on a receiver you can listen to the conversations going over that wire.

Q. That is the only tap you know about? A. That is what I thought you meant.

Q. No, but it includes that.

Commissioner Woods.—Now, I say that any legislation that can be put into operation which shall put a kink in the work of the crook and make more powerful the work of those who have to enforce law and order, is good legislation; and I think any legislation which puts a kink in the powers of law and order and makes it more easy for the crook to do his business without being known to the forces of law and order is legislation in the interest of the criminal classes.

Mr. Moss.—Mr. Commissioner, there are some criminals who have made a business by tapping poolroom wires. They have followed the method you have just described. But what would you say about a detective agency that does not report their operations to any public officials, cutting into business wires and tapping them at their own sweet will?

A. I am wholly against it.

Q. Do you know of its being done? A. I do not. It might have been done perfectly easy and I should never have known about it.

Q. Do you know whether it was done in the Seymour & Seymour case? A. No, to the best of my knowledge it was not done, but it might have been done and I might not know about it. Even with the present high state of efficiency of the police department, some things may go on without my knowing about it.

Senator Thompson.—Even I lived at the Biltmore for a whole year before you knew I was there.

Mr. Moss.—I am free to say that we expect the police department to do effective work and to get knowledge of crime as best they can. We expect them to do it, of course. This inquiry goes along somewhat different lines. It has taken in your department necessarily, but after all, our inquiry is rather with the public service corporation which furnishes telephone service.

Commissioner Woods.—Exactly, and what I am very much interested in now, what I want to impress upon the Committee, is that it would be against the public interest to prevent the telephone company from working in co-operation with the official police department of the city in its proper hunt after crime.

Q. Have you ever attempted to oversee that operation of the telephone company, which is called censoring, wherein, as I understand it, a switchboard is provided with a number of operators, who observe and record messages that go over the wires of the subscribers? A. No.

Q. Do you know anything about that? A. No. I don't know anything about that at all.

Q. Would it be a proper field for police observation to see whether that function is abused or not? A. Well, as I understand it, the listening to conversations over the telephone is justified only if there is reasonable grounds for believing that crime has been committed.

Q. That is the police part of it, but suppose there would be a practice with a telephone company upon a considerable scale of listening-in on the conversations of subscribers and recording them. Now, the recording of such conversations, the time and circumstance would of course make a record of the conversations that go over the wires, business conversations, financial conversations, if the people didn't handle it right, might be very detrimental to interests, large and small. Has the police department ever taken that into consideration, ever looked into it? A. No, I didn't know that that practice existed, Mr. Moss. I think that is a matter of legislation.

Q. Do you know where there may be any such switchboard? A. No, I don't know anything about this. I don't know any-

thing about it at all. I think you won't go far wrong in your legislation if you will allow the police department to listen on telephone wires for the sake of getting after crime, and keep everybody else off.

Senator Thompson.—That is just the thing in my mind, that the telephone company be absolutely prohibited from allowing any kind of a tap except by the police department, and make them keep a record of what is done.

Commissioner Woods.—That is my idea.

Mr. Moss.—There may be a very good motive in rubbing off the slates, but the very fact that slates may be rubbed off may leave an opening for other operations.

Senator Lawson.—The question to my mind goes further than that. It involves the constitutional right of private persons, even to have the police listen-in. The question is not only whether it is justifiable or as to whether it invades the constitutional rights of the citizen himself. He has no opportunity to be heard. He is not accused directly. I question very strongly whether the police power of this State to-day is so extensive, is so great, that it permits even the police to listen-in.

Senator Thompson.—There isn't any question, Senator, but what if the testimony of this little boy —

Commissioner Woods.—Do you mean me?

Senator Thompson.—The previous witness, there isn't any question but what if his testimony is true, that William J. Burns has violated the fourth amendment of the Constitution absolutely.

Mr. Moss.—I understand that William J. Burns has admitted as much to the district attorney of New York county, who thereby is charged with the serious duty of investigating the case.

Senator Thompson.—That is true, but what I wanted to say is, you couldn't pass any law that could legalize that thing as long as the Constitution remains.

Mr. Moss. While you are on that subject raised by Senator Lawson's question, isn't it a fact that in quite a number of cases



the wires of reputable and perfectly innocent people have been tapped without their knowledge in the endeavor to find some criminal who might be found through that method?

(Mr. Woods whispers to Mr. Moss.)

Mr. Moss.— All right, you want me to hold that question. I will withhold it. I am only speaking about the method, I am not speaking about specific cases, and I don't propose to ask you about any specific case. I see the unwisdom of doing that, and that is one of the very reasons why I have not been willing that the list should be published, because I have understood that there might be upon it, and probably are upon it, the names of innocent persons who don't suspect now that their wires were tapped, whose wires were tapped in order to find out whether there might not be criminals using the wires in some way or other, without the guilty knowledge of the individual.

Of course, in that way you would be tapping the wire of an innocent person, and while trying to find somebody else, you might be listening to the most sacred secrets.

Senator Thompson.— That can be taken up later. Of course, in fairness to you, you take in some cases, a pay station might be listed under the name of a private individual, but it is a pay station just the same, and it is a public station. Now, it may be that some thief is coming and using that public pay station. There are so many questions about it that we can't foreclose it just now.

Commissioner Woods.— Now, I want to call your attention to the similarity of this sort of detective work with a great many others, and the fact that probably most forms of detective work are disagreeable and pretty mean work. Just think what you do with your detectives. You give them a job of having their profession in life that of dealing with criminals, with the dregs of humanity. You subject them to that job, and they have got to use methods that meet the case. If you confine detectives in their pursuit of criminals to methods that would be used with lawyers — no, I will withdraw that word —

Mr. Moss.— You may say that have been used with lawyers.

Commissioner Woods — If you confine your detectives in their work against criminals to methods which should be used with honest men —

Mr. Moss.— You never practised law, did you?

Commissioner Woods.— You are making it impossible for them to get results and deliver the goods in the class of work that you set them to do. The old saying of “Set a thief to catch a thief” is a pretty good saying. The detective works with the thief’s methods and uses the thief’s weapons.

Now, you can’t do detective work in this town in a high hat on and kid gloves. Well, if you are going among certain quarters where they wear high hats or kid gloves, you can, but there are crooks who don’t wear the high hat and kid gloves except when they want to take off their disguise.

You have got to use the methods. You have to speak the language. You have got to use the kind of methods that will work in those particular cases, and chasing a crook is a job which most of you gentlemen haven’t had experience with, and I know you haven’t had experience in being chased as a crook.

Senator Lawson.— If we have, the Commissioner hasn’t noticed it.

Senator Thompson.— I was justice of the peace for seven years, you know.

Commissioner Woods.— Now, then, to do that work, to run down crime and to get your criminal, the detective has got to do a lot of stuff that is mighty disagreeable work, and it would be wholly unjustifiable in anything else. For instance, he uses disguises. That is done. It would be unjustifiable to do that except for such a purpose.

Eavesdropping — the most objectionable sort of thing is eavesdropping. We all object to it, we all revolt at the very idea of it. It has to be done in certain cases by detectives, or criminals will go unpunished and crimes will be committed which could have been prevented.

Shadowing a crook on the street — if we send some of our good shadowers — and we have got some mighty good ones, Mr. Chair-

man — if we send some of our good shadowers to shadow honest people, it is a wholly unjustifiable thing for us to do. This is a free country, living under constitutional order, and that would be an infringement upon the rights of an honest man, but I maintain that it is not an infringement upon the rights of the crook. There is altogether too much sappy talk about the rights of the crook. He is a crook. He is an outlaw. He defies what has been put down as what shall be done and what shall not be done by the great body of law-abiding citizens. Where does his right come in? If people would spend less time talking about the rights of the dear criminal and spend more time in backing up the authorities of law and order in the pursuit of criminals and in the just punishment of criminals, we would have less criminals to bother with.

Mr. Moss.— Who determines whether a man is a criminal?

Commissioner Woods.— The regular judicial procedure.

Senator Thompson.— My experience has been that there is more talk about the rights of criminals who have got a lot of money than the rights of the ones who haven't.

Commissioner Woods.— We don't know, Mr. Chairman, in the police work of this town, the difference between rich and poor or black and white or foreign and United States. They all look alike to us and we just know one set of differences, and that is honest and dishonest. That is all we know about. Nothing else comes into the police business. That is all we have to do with.

Now, you take the question of the dictagraph. There is a proper prejudice against putting a little inconspicuous machine in a room and by means of that and by means of a carefully hidden wire, carry a conversation up over somewhere else to someone's ear listening in some room far off. There is a popular prejudice against that, and that prejudice is a proper one.

I wonder if any one in this room would object to the use of a dictagraph in a case like this? A murder has been committed. A couple of desperadoes have been arrested whom we are morally certain know about that murder. They are put in a cell together and in that cell is a dictagraph. The wire from that dictagraph leads out into a room and at the other end of it is a detective.

The two criminals talk about this murder. The detective at the other end of it overhears it and as a result of that, the murderer is apprehended. Does any one object to the use of a dictagraph in that case?

Now then, listening over a telephone is what you might call a long distance dictagraph, and I submit strongly and emphatically to you, Mr. Chairman, that it is as clear as crystal as to how the whole thing should be conducted; that listening over telephones, like shadowing, like the use of a dictagraph, like the use of disguises, like the use of eavesdropping, like any detective method that is lawful, is something that should be used against criminals, and in the interests of the law-abiding public and should not be used in any other way; that it is a question of how it is used. It is a question of use and abuse.

Senator Thompson.—Right in there I would like to ask you a question. Supposing a man is charged with murder, and we will assume that it is a vile, reprehensible murder. You put him in the toms and he sends for a lawyer, and we have got a law that enables him to talk with someone, and we pick out a lawyer for him. We have got another law that says that that lawyer must not tell anything about the talk and that he can have a confidential talk with him. Do you think it would be right, when his lawyer is called, to put a detectaphone in there and have the police take the conversation that he has with his lawyer?

Commissioner Woods.—No, if he is talking with a lawyer who is a regular retaining lawyer; but if that lawyer happens to be at the same time a crook——

Mr. Moss.—Who is going to pass on that?

Commissioner Woods.—We have got to use our own judgment.

Mr. Moss.—That makes you a czar. That is where the Constitution comes in.

Commissioner Woods.—There is no possible doubt, if a criminal is in a cell and he wants to talk to his own lawyer, there is no possible question but what it will be made known to the authorities that it is his retained lawyer.

Mr. Moss.—But how can you assume that a lawyer who is licensed to practice by the Appellate Division and whose sheep-skin has not been taken away from him and who is in the very act of consulting with a client, how can you assume that that lawyer is a crook and take the privilege of listening-in on the conversation?

A. Such a thing would not be listened to, unless it was the case of two criminals.

Q. You never would listen to a man making a confession to a clergyman, would you? A. No.

Mr. Moss.—All right.

Commissioner Woods.—Now, here is another element of the case. Detective methods, if they are going to beat down the up-to-date and the very skillful and the very able crook of to-day, have got to be used which are objectionable in their abuse and absolutely necessary in their proper use, and that is putting in a detective to live with thieves, as if he were a thief. It would be wholly unjustifiable to have a detective worm his way into the friendship of some honest men in order to get from those honest men information of any kind. On the other hand, it is necessary, if we are properly to protect the city against crime, to do exactly that in the case of criminals.

And let me give you one example that you may remember. We prevented an anarchistic explosion in St. Patrick's Cathedral by that very method. A young detective got his way into a group of anarchists and was able to stay with them so that we could prevent that explosion, and instead of having a destructive explosion in the cathedral, we prevented it. Do you object to that kind of detective work or do you applaud it? At that time it was considered a very fine piece of work. The method used would be wholly objectionable if used against honest men.

Senator Thompson.—I was going to say that my experience with detectives is that you couldn't misplace them if you did put them in those places.

Commissioner Woods.—Well, I don't know about your up-State detectives.

Now, there are one or two cases that I should like very much to mention to show you actually, by cases, what has been accomplished in this way. On April 22 of this year, a man named Frank Hallman, alias Big Frank, was arrested at 260 Madison street, charged with violation of section 37 of the United States Code. That is conspiring to purchase and sell cocaine. The case is now pending in the Federal Court. Two hundred dollars' worth of cocaine was found in his possession. Was it worth while to arrest that man? It was done as the result of listening on the telephone.

On December 7, 1915, two telephone wires were covered as a result of information which came to the police. As a result of that, Jacob Levy, an ex-convict and receiver; Jacob Callman, an ex-convict; Joseph Harris, De Soto Castango and Frank Carr were arrested. Levy, Carr and Harris were convicted for receiving stolen goods. Castango was returned to Philadelphia on a warrant for burglary. The others were discharged. Three thousand dollars' worth of silk was discovered. Listening on the wires brought about that result.

On June 4, 1915, another wire was put on to discover the whereabouts of a Mr. Seelia, a fugitive from justice. He was arrested as a result of the information we got from listening over that wire. On February 15, 1915, another wire was put on and through the information received, three men were arrested for receiving stolen goods, and two thousand dollars' worth of silk was recovered, the property of Samuel Isman of Twenty-third street, near Fourth avenue. The property was all recovered, although we did not succeed in convicting the thieves. You must remember in a case of that kind, there are two jobs, convicting the thief and receiver and recovering the property. These cases of receivers are very, very difficult. We get our best results in recovering stolen goods by the use of wires.

Here are some more. One wire was put on a saloon, two others on some baths, and another one on a saloon, as a result of information received. As a result of information that we got over one of those wires, James Flanigan was arrested on the 8th of June, 1915, for holding up with a revolver one Thomas Boye, the cashier of a Borden Condensed Milk store at One Hundred and

Seventy-eighth street and Park avenue, and stealing one hundred seventy-five dollars in cash and one thousand dollars' worth of checks. He held him up at a point of a revolver and took the stuff away from him and got away. We got Flanigan as a result of listening over those wires. We got him and he got sixteen years, which he is now serving in the State prison.

By means of listening over the wire, Charles Risso, alias Jones, and a gentleman known as Big Mike, and two others, whose names I haven't got here, were arrested for having in their possession a quantity of feathers valued at one thousand dollars, stolen from Gimbel's store.

Mr. Moss.—Have you got "Little" Mike there?

Commissioner Woods.—I am not sure about Little Mike. Big Mike pleaded guilty, perhaps to save Little Mike. He turned State's evidence. Jones, an opium distributor, also pleaded guilty and they got one year.

Here is another wire put on March 5, 1914, and taken off July 5, 1914. A load of goods was stolen and an arrest was made a couple of days afterwards. Two thousand dollars' worth of goods were recovered. Harris Bobker, a notorious receiver whom the police have known about for years, was arrested, and another man was arrested. Bobker pleaded guilty. The other man was tried twice and the jury disagreed.

On November 14, a salesman ran away from a store on Maiden lane with jewelry valued at twenty-five thousand dollars. We got information over the wire that led to the recovery of that jewelry. Unfortunately, we missed the thief.

Information was received over the wire which resulted in the arrest of James Meer, an ex-convict and truck-thief, with a truck-load of goods valued at eight hundred dollars. He was convicted, as a result of this. Six other arrests followed. Selig Milkowitz, charged with receiving stolen goods, was convicted. Samuel Barnett and Ruben Horowitz, charged with receiving in Hartford, Connecticut, three thousand dollars' worth of silks and woollens — goods recovered and the thieves convicted.

August 24, 1914, Rosario Canellio, Charles Denelio, and Richard Harrison, arrested charged with stealing a truck and

contents, valued at fifteen hundred dollars, and the property was recovered. This was by information received by listening to a hangout of thieves over the wire.

Now, I won't take your time, Mr. Chairman, longer. These cases were hurriedly gotten together.

Mr. Moss.—Over how long a period?

Commissioner Woods.—Over the period while I have been in the department. We asked individual detectives to give us this morning cases of crimes which they had gotten as a result of listening over the wires, and these were the ones we got.

Q. Did they get them solely by listening over the wires, or was that incidental? A. We asked for cases where results would not have been obtained but for listening over the wires. Take the case of the murderers of Bernard Baff. We have gotten two of those men convicted. The listening over the wires was of material assistance in securing those convictions. I told you about the case of the murderer Schmidt. There are many other cases which I can not go into. The Gorndorffs, by the irony of fate, were known as wire-tappers. They had been loose for years. We got them and they are behind the bars now, and we got them as a result of listening over the wires by the police.

Mr. Moss.—That was fair. That was retribution.

Commissioner Woods.—I think that you are with me on any proper use by the police of this method, and of other methods in the *bona fide* effort to get criminals and to stop crime. Now, that is my story, Mr. Chairman.

Senator Lawson.—Mr. Commissioner, how far do you figure you have the power to go into this, if you are going into private houses and tap wires, irrespective of the class of people that live in those neighborhoods or anything like that? I don't think the police have the power to do that.

Commissioner Woods.—Well, Senator Lawson, my idea about it is, it is a question of where there are a good many border-line cases, and we have to decide each one on its merits; and my idea is to lean the other way in deciding them; that is, to lean on the



side of seeing that there is no possible invasion of the rights of a law-abiding citizen.

Mr. Moss.— Senator Lawson's questions always seem to suggest another one to me. Now, supposing a very well-known citizen should lay before you a complaint against some other citizen who theretofore had been of good reputation, but not especially so, that is, not so well known, and it should occur to the detective department that some information might be gotten by listening over those wires. Now, would you take the complaint of the well-known citizen to be a sufficient authority, morally and otherwise, for you to cut in upon the wire of this less-known citizen, who had never been convicted of crime?

Commissioner Woods.— Under no conditions should I consider such a complaint, no matter who made it, sufficient evidence to justify me in listening over the wires.

Q. Now, then, how do you decide it? A. I use my best judgment, when the facts of the case are presented to me, as to whether it is a case in which the wires should be listened over or whether they shouldn't.

Q. Now, just by way of illustration, we have already mentioned the names of some persons who had good reputations in the community, but other persons of reputation made certain statements to you which justified you in listening-in on the wires. Now, how do you draw the line? I don't ask you to discuss any particular case. How do you draw the line where you will listen-in on a person's wire and where you will not? A. We will not listen-in on anyone's wire unless a careful examination of the facts of the case convince us that crime has been committed or is about to be committed, and that by listening-in on that wire we can get evidence that will bring about conviction of the crime or will enable us to take such action that we shall have a good chance of preventing the commission of the crime.

Q. But here is a citizen, we will say, an unblemished reputation, who has never been known to do anything wrong in the community, who has been honored in the community, and you cut in on his wire without giving him an opportunity to make an explanation or defense. Indeed, you cut in on his wire not because

he has but because he may commit a crime. A. Just as I said, Mr. Moss, we don't cut in on anyone's wire because he may commit a crime.

Senator Lawson.—Who is the judge of that?

A. I am the judge. We don't cut in on anyone's wire unless I can be convinced that it is in the public interest to do that so as to prevent crime or so as to get evidence of crime that has been committed, and that no injustice will be done to anyone in the process. Mind you, it is all graveyard work. This thing has been going on during our whole administration until it was dragged out this time, and the effect upon the community was all good. No one has had his reputation hurt. No harm came to anyone, and a whole lot of thieves were put behind the bars.

Q. How can you tell whether anyone's reputation wasn't hurt? How can you tell whether or not any persons in the ten thousand men you command may not have made private use of information they got through this? A. The reason I speak so confidently about it is that we took such strenuous measures that nothing of that kind should happen. We aim to make perfectly sure that there should be no abuse of this thing, and the result was that from the beginning we went into it and tried to surround it with every possible safeguard, and I believe absolutely that we have been successful in surrounding it with such safeguards that there hasn't been any abuse.

Q. Well, is it possible that a person of spotless character and unblemished reputation may be listened upon, one that you know his life has been spotless, so far as it is possible to know that, and that his reputation has been unblemished; is it possible? A. It is absolutely possible, Mr. Moss.

Q. And it is likely? A. It is possible that a person of spotless reputation and unblemished character — coming from up-State, we will say — may have his conversation listened on if he gets on a wire which we have reason to believe will be used by someone for the commission of crime or by listening over which we can get evidence of crime, if he goes in and talks over that wire, his conversation will be listened to.

Q. Is it possible that a person, up-State or down-State, or from a foreign country, of good character and unblemished reputation,

may be listened to on his own wire? A. It is possible that he may be listened to on his own wire. He may be on some sort of a party wire.

Q. Suppose it is not a party wire? A. If this person of unblemished reputation and spotless character has his own wire leading into his own room, the question I am asked is, is it possible that wire might be listened-in on? All that I can say to that is that we have taken the most complete measures that we know how to, to avoid exactly that thing, but we are all human and none of us infallible. I can't say that it is impossible that that thing should happen. I can say that we have used and are using the best measures that we know how to prevent it, and if more thorough measures to prevent that sort of thing can be suggested to me I will use them at once.

Q. Is it possible for members of the department, through the system which you have provided, to tap the wires of people without your knowledge? A. The telephone company will not permit — will not give us their co-operation until they get my signed request for it. No one in this town, Mr. Chairman, need have any fear that his conversations are going to be listened to unless he is a crook.

Q. Do you mean that? A. Yes.

Q. Do you mean to say that you have not listened to conversations of persons that were not crooks? A. It may happen, as I say, in case he gets on another wire.

Q. And you knew you were listening to the conversations of people that were not crooks? A. It will happen.

Q. Hasn't it happened and don't you know it has happened? A. Yes, it has happened in just the way I have suggested.

Q. And who ordered you to do that? A. It was done, not because anyone ordered it, but it was done in spite of our best efforts to do our police job right and to avoid any danger of this kind.

Q. Were you directed to do that? Were you requested to do that by any superior authority, to listen-in on the wire of any person who was not a crook? A. No.

Q. Were you directed by anyone to listen on the wire of Father Farrell? A. No.

Q. Did you tell the grand jury of Kings county that you were? A. No.

Q. Or advised to? A. No.

Q. Or that you did it in conference with anybody? A. No.

Senator Thompson.—I don't think we ought to take that up until after the grand jury passes on it.

Mr. Moss.—The very delightful and thought-producing conversation of the commissioner let me to put the question, but I think it is right to withhold it.

• • Commissioner Woods.—Mr. Chairman, I want to make plain also that in this whole business, we are concealing absolutely nothing except such things as are necessary in the public interest to conceal. A lot of police detective work must be done in secret. If there is a pickpocket outside waiting to get the Chairman's watch—he would pick out the best watch in the room——

Senator Thompson.—They got it the other day.

Commissioner Woods.—We have got to shadow that criminal and prevent that crime, and we should not be able to get him if we went up and tapped him on the back and told him about it. A lot of detective work has to be secret, but with the exception of such methods and such facts as we have to have kept secret in the public interest, the whole thing is an open book. We have got nothing to conceal and we take pride in letting every one see what is doing.

Senator Lawson.—Now, Mr. Commissioner, is that your statement up to this time?

A. Yes, sir.

Q. I would just like to ask you one or two questions for the purpose of the record. It is a constitutional right of an individual, if he wants to prevent a wrong being done, he goes into a court of equity and asks to enjoin the party that he thinks is going to wrong him and that is heard by the court, and if the party presumed to be aggrieved is justified, the court will issue an injunction. That is just a little different from the power you have as a police commissioner.

Now, for the purposes of the record, I want to ask you this: Have you been advised by the corporation counsel or by the dis-

trict attorney of any county in this city, and do you believe that the police power of the State is so great or so extensive that the rights of private persons may be invaded by listening-in upon telephone wires, contrary to the constitutional rights of citizens who have not been accused of crimes? A. Well now, see here, Senator Lawson, I am not a lawyer and you throw a lot of legal stuff into that question. Let me answer it in my own way, and I will answer it as fully as I can. That is, I have been advised and I believe that the police have the power to listen to telephone conversations if it is a *bona fide* effort to get crime on their part. Does that answer you? That may not be your ——

Q. Well, it doesn't answer me fully. You don't qualify it sufficiently.

Senator Thompson.—Of course, I think it is fair to keep in mind here that for twenty-one years, very nearly, the police department of the city of New York have used this method. The commissioner has been commissioner for two out of those twenty-one years.

Mr. Moss.—I don't credit that, Mr. Chairman, just because that thing has been going on for twenty-one years.

Senator Thompson.—I was going to say another thing. In a city of five million people, in two years approximately there have been from three hundred and fifty to four hundred people whose wires have been tapped. It think it is fair to consider that.

Senator Lawson.—The idea is this to my mind, whether the great mass of the people are going to be injured by a custom or a procedure just to apprehend a few, and how far that system is to go.

Commissioner Woods.—Good Lord, Senator Lawson, we don't apprehend just a few. I just wish I had gone ahead with this whole list. The five million people are not crooks, but the question is whether it pays from the results we get, and I give you my firm judgment, and it is backed by the technical judgment of the men in the detective bureau, that it is a most important weapon of police work; and if the police are no longer allowed to use it — and I want you to understand, too, that that weapon has been seri-

ously damaged, if not destroyed, by this publicity given to it, and this publicity has worked directly in favor of the criminal interests.

Mr. Moss.—Somebody told us they were going to go ahead, the same old crooks, the same as ever.

Commissioner Woods.—I guess I am about the only one that knows the facts.

Mr. Moss.—I will tell you who it was, and he ought to know.

Senator Lawson.—This all leads me to a conclusion, Mr. Commissioner, that some innocent person whose wire you may have tapped, who feels justly aggrieved, may proceed to test the question, and if it reaches the point of the United States Supreme Court, I am wondering whether they wouldn't declare that listening-in is unconstitutional.

Commissioner Woods.—Well, of course, I don't know. You can never tell what lawyers will do when they are let loose.

Senator Thompson.—Pretty nearly everybody in this town thinks his telephone has been tapped, and I do wish they would get that out of their heads. I suppose it is less than one per cent.

Commissioner Woods.—It is nothing like one per cent. It is a thousandth of one per cent.

Senator Thompson.—Well, they must have one chance in about a billion or something like that.

Commissioner Woods.—No, they have got three hundred fifty chances out of five and a half millions in a year that every one's wire is tapped, and that chance wouldn't mean anything unless that person is a criminal, unless a mistake has been made.

Mr. Moss.—You mean tapped by you? A. Yes.

Mr. Moss.—Well, there are others.

Senator Lawson.—They have got to make out a pretty strong case.

Commissioner Woods.—A damned strong case. I mean, they have got to make out a very strong case.

Mr. Schuster.— In any event, this power should be limited in its use to the officers only.

Commissioner Woods.— Absolutely.

Q. What would you think of having more than one person in each district? A. It is that that everlastingly slows up things. This committee business and council meetings and everlasting conferring business is the best way in the world to slow up things. My idea is to put someone on the job and tell him what to do. If he makes good, all right, and if he doesn't, get someone else.

Senator Thompson.— I am going to tell you something. When I first began to board at your hotel, if you had only told us about this instrument you have got and let us had it, we would have been out of here in three weeks and had all our work done.

Commissioner Woods.— (Do I understand that as an official question of the Thompson Committee for the co-operation of the police department?

Mr. Moss.— The crooks have all stopped, you see.

Commissioner Woods was excused and MR. KALB called to the stand:

Mr. Moss.— What is your full name?

Mr. Kalb.— Charles W. Kalb.

Q. Mr. Kalb, are you an electrical engineer in the Equitable building? A. Yes, sir.

Q. And you did enter the office of Seymour & Seymour on the twenty-seventh floor in connection with William J. Burns? A. Yes, sir.

Q. Who went with you? A. Why, I was alone the first time, sir.

Q. What did you do? A. I installed a dictaphone.

Q. Who told you to do that? A. Mr. Burns.

Q. Well, do you remember who first asked you to do anything for Mr. Burns? A. Mr. Burns himself, sir.

Q. Well, what authority did he have? A. I was asked to co-operate with him.

Q. Who asked you to co-operate with him? A. Mr. Coley.

Q. When you went up there, how was the office of Seymour & Seymour entered? A. Through the door.

Q. Unlock it? A. I believe it was unlocked.

Q. Who unlocked it? A. I did, sir.

Q. And you and Mr. Burns went in together? A. No, sir, Mr. Burns wasn't with us the first time.

Q. The first man that ever spoke to you about it was Mr. Coley. A. No, Mr. Burns.

Q. Oh, Mr. Burns came to you? A. Yes, sir.

Q. When was that? A. I couldn't remember the exact date.

Q. That was the elder Burns? A. Yes, sir.

Q. And how did you know it was Mr. Burns? A. I was introduced to him.

Q. By Mr. Coley? A. Yes, sir.

Q. What did he say? A. "Mr. Burns wishes you to do something. Do as you are bid."

Q. What time of day was that? A. About the noon hour.

Q. What did you do then? A. I went into conference with Mr. Burns.

Q. What did he say to you? A. He told me he had some people and he would like to see whether he couldn't get some information by installing a dictaphone.

Q. Is that just what he said to you? A. Yes, sir.

Q. What did you say to him? A. I don't remember saying anything.

Q. Then what did you do? A. I concealed the wires and installed the dictaphone.

Q. You didn't do that right away? A. Yes.

Q. Did he have the dictaphone? A. Yes.

Q. Brought them with him? A. He had sent them.

Q. Then you didn't do that the same time he was speaking to you first? A. That night.

Q. I am trying to hold you down to the first time you saw Mr. Burns. You didn't do that the first time? A. No, sir.

Q. When did he come again? A. I don't quite remember.

Q. How did you get the dictaphones? A. The boy brought them in.



Q. And when you wired those dictaphones into the office of Seymour & Seymour, who was with you? A. I think I was there alone, sir.

Q. Well, how did you get the wires through the wall? A. I didn't go through the wall.

Q. How did you do it? A. I concealed them in the electric light wires.

Q. And where did you run the receiver, where did you put it? A. In the fixtures.

Q. In what room? A. In the extreme east and extreme west room.

Q. Two rooms? A. Yes, sir.

Q. Then you had two dictaphones? A. Yes, sir.

Q. Then where did you make the tap where it could be listened to? A. The room adjoining.

Q. What was that, the Belgian room? A. Yes.

Q. Well, after you had installed those two dictaphones in two rooms of that suite, what was the next thing that you saw or heard of the Burns people? A. I installed one first — they didn't care about Mr. Seymour's room. They wanted the extreme west room.

Q. That was the room where several men were located? A. Yes, sir.

Q. You put it in there? A. Yes.

Q. And you carried it out through the electric wires so that it could be listened to in the Belgian room? A. Yes.

Q. Did you report to anybody what you had done? A. No.

Q. Then you went into the room another time? A. Yes.

Q. Were you asked to do that? A. I suggested it.

Q. To whom? A. Mr. Burns.

Q. Did he come down there and talk to you down there or did you go to him? A. I think we spoke over the phone, sir.

Q. And in what room did you install that second dictaphone? A. In the east room.

Q. Do you know which of the Seymours that was? A. No, sir.

Q. And did you bring that out into the Belgian room so it could be listened to in the Belgian room indirectly? A. Yes, sir.

Q. What conversation did you have with Mr. Burns about that? Did you tell him you had done it? A. Why, I don't think I did.

Q. He had an operator there? A. Yes.

Q. Who was the operator? Was it Mr. Lynch? A. Yes.

Q. You talked to him about it? A. I didn't talk to him about it.

Q. Well, he was there, wasn't he? A. No, he wasn't there at the time. At one time he was.

Q. Well, you saw him there at one time? A. At the time I made the connection, I don't think he was.

Q. Well, were you ever there when it was working? Did you go into the Belgian room at any time in the day when it was working there all right? A. I couldn't answer that.

Q. Yes, you can. Did you see Mr. Lynch taking notes? A. There wasn't only Mr. Lynch.

Q. Did you ever see Miss Murray? A. I don't believe I did.

Q. Did you see Lynch? A. I believe I did.

Q. That is, Lynch was listening and getting what was transpiring in Seymour's room and writing it out? A. Yes, sir.

Q. That was in the daytime? A. Yes, that was in the daytime.

Q. Were you there at the time that young Smith was present and did some work? A. No.

Q. That was after you had put in your two dictaphones? A. He installed one. I criticized the crudeness of it and how easily it could be detected, and I removed one where he installed it and put in one where it couldn't be detected.

Q. Where did you put it? A. In the fixtures.

Q. Then the second dictaphone was the one that Smith had installed? A. I don't know.

Q. Well, whoever it was? A. Yes.

Q. And you made it a little better? A. Yes, sir.

Q. And that was in the same room? A. Yes, sir.

Q. But you connected it up better? A. Yes.

Q. Well, where did you put the receiver? A. In the fixture.

Q. What do you mean by the fixture? A. Up in the chandelier.

Q. You mean right in the base, up in the ceiling? A. Under that brass thing there.

Q. Oh, I see. Well, it was crude when it was behind the desk? A. Yes, sir.

Q. You would never detect it, would you? A. No, sir, it was never found.

Q. And it was up to you to get it out afterwards? A. Yes, sir.

Q. And you got it out? A. Yes, sir.

Q. When did you take it out? A. The day I was arrested.

Q. Who arrested you? A. The district attorney's representative.

Q. What happened? A. He questioned me.

Q. Were you really arrested? A. No, sir.

Q. Subpoenaed? A. Yes, sir.

Q. Well, that isn't arrested. A. Well, I am glad it wasn't.

Q. When was that? A. The day after.

Q. What day? A. I couldn't tell you exactly. It was last April.

Q. The latter part of April? A. I couldn't tell exactly.

Q. Well, it is hard to tell the dates of this thing. How long had it been in? A. That I couldn't answer.

Q. Had it been in two or three weeks? A. I couldn't answer. I could only make a rough guess.

Q. Now, did you report what you had done to any of your superiors in the building? A. No, sir.

Q. Didn't they ever ask you what had been done? A. No, sir.

Q. Or show any interest at all? A. No, sir.

Q. Did you see William J. Burns down there on either of those night occasions when you were there? A. On a couple of occasions.

Q. Did you see him in the Seymour room? A. Yes, sir.

Q. Did you see him at the time he looked in the desk? A. No, sir.

Q. Didn't you see him look in the desk? A. No, sir.

Q. What did you see him do? A. He looked on the desk.

Q. Well, what was on the desk? A. Well, I said on the desk. I might say on the floor, there was a telegram on the floor and he picked it up and laid it on the desk.

Q. Did he read it? A. I couldn't state.

Q. Did he leave it on the desk? A. I didn't see him.

Q. Was it opened? A. Come to think of it, I don't think there is no roll-top desk there. I think they are all flat-top.

Q. Did you see him handle any papers? A. Only the one I told you about.

Q. Now, you wouldn't contradict anybody else, would you? I am satisfied you are thinking, but you seem to be a little nervous, and I am just giving you a chance to keep your testimony right. You don't want to be in conflict with yourself or with anybody else. Now, tell me what you saw him do around the desk. A. Why, there was a paper laying there, stuck in the blotter. He glanced at it.

Q. Well, what did he do when he glanced at it? What did he glance at it for? He wanted to see it, didn't he? A. To be frank with you, I wanted to get out of there.

Q. You say he glanced at it. You must have seen what he did. A. I was doing my duty.

Q. Oh, I know, but that is a little room, isn't it? A. Yes.

Q. How long was he in there? A. I don't know.

Q. Did you ever see his son up there? A. Not in those offices.

Q. You saw him in the building? A. Yes, sir.

Q. What did you have to do with his son? What were you seeing his son about? A. I think he brought down a different transmitter to me once.

Q. Yes. He brought down a transmitter and you put it on? A. No, no, it was already on.

Q. But what did you do with the transmitter? A. I changed it.

Q. And you used the transmitter that young Burns brought down? A. Yes.

Q. And he gave it to you to use, didn't he? A. There was two in use, sir, and one went kind of dead and he brought down a live one.

Q. That was a live job, wasn't it? A. Yes, sir.

Q. And you used it? A. On second thought, I don't believe he did bring it down.

Q. What did he speak about? A. Nothing pertaining to the job.

Q. What was he there for? A. I will tell you — to change the combination on the lock.

Q. On what lock? A. On that Belgian Relief room, so a master key wouldn't open it; so porters and anything like that couldn't get in.

Q. And he didn't bring down a detectaphone? Now, Mr. Kalb, I take it you are an honest man or you wouldn't be in your place, and it is not up to you to protect anybody else. You have only to think about yourself, and I want you to think about yourself, and I want you to tell what happened. I want you to tell the real thing and nothing else, because what is there on that little machine there, when you go out, is the thing that will speak for you. Now, once more, what did Mr. Burns do in the office of Seymour & Seymour? A. Mr. Burns, Sr., came down there with a key so I could open this Belgian Relief room and take the cylinder and take the combination out, so anybody could go into that room.

Q. That was so in which room? A. In the Belgian room. That is the master room. That was so the porters could open the door to clean it.

Q. Was that in the Belgian room? A. Yes.

Q. Was that while Burns was using it?

Senator Thompson.—Are you telling us about the time you went into the Seymour & Seymour room with Burns?

A. I thought he was asking me what Burns was wanting me to do.

Mr. Moss.—I am talking about the Seymour office.

Senator Thompson.—He is talking about the time when you and William J. Burns went into that room of Seymour & Seymour, and he wants you to tell him again what you remember that he did in the Seymour & Seymour room.

A. Well, I met him in the Belgian room——

Senator Thompson.—He wants you to tell him again what you saw in the Seymour office.

A. He glanced at the desk and looked at the telegram on the floor and put it on the desk.

Q. (By Mr. Moss).—How long did he stay in there?

A. I couldn't say, sir, because I was busy in trying to get out.

Senator Thompson.—Were you paid for this work?

A. No, sir.

Q. It was a regular job for an electrician? A. Yes, sir.

Mr. Moss.—Did you ever install any dictaphones in any rooms in that building other than this?

A. No, sir.

Mr. Kalb was excused and Mr. MORTIMER was called to the stand and sworn:

Mr. Moss.—Will you give us your full name, Mr. Mortimer?

Mr. Mortimer.—George T. Mortimer.

Q. What is your relation to the Equitable building? A. President of the company that owns the building.

Q. And did you introduce Mr. Williams J. Burns to Mr. Coley? A. I did.

Q. And told Mr. Coley practically to help Mr. Burns in what he wanted? A. Yes, sir.

Q. Who asked you to do that? A. Why, Mr. Egan.

Q. Who was Mr. Egan? A. Of J. P. Morgan & Company.

Q. Mr. Egan of J. P. Morgan & Company asked you to do that? A. Yes.

Q. Did Mr. Egan of J. P. Morgan & Company present Mr. Burns to you? A. No, but he told me, after I had a preliminary talk with Mr. Egan, that Mr. Burns would come to see me whenever it was agreeable to me that he should.

Q. When did you have that talk? A. Well, it is difficult to fix dates. I should say it was early in March.

Q. Where did you have that talk? A. In my office.

Q. Did Mr. Egan come to your office in the building? A. Yes, sir.

Q. Did you know him? A. Yes.

Q. And, of course, you knew who he was when he came to speak to you? A. I did.

Q. Please tell us what he said to you. A. Well, it is a long-winded conversation. He told me that evidently there was some employee in their office who was divulging information to certain people whom they thought was in our building, and that information was being used for blackmailing purposes.

Q. Did he say blackmailing? Did he use that term? A. Well, I don't know. I wouldn't say that he did exactly, but he left that impression.

Q. At any rate, it was for some improper purpose? A. Yes. And he said that this information was traced back to the office of Seymour & Seymour, that it was very important, naturally, that they should detect their employee, and naturally if we had people in our building who were doing things that weren't proper, we were very much interested, and I told him I was. After going into the matter at some length with Mr. Egan, I told him that if he would send Mr. Burns to me, I would give him what assistance I could.

Q. Did Mr. Egan suggest the doing of any specific thing? A. No, he did not.

Q. Did he suggest that the office of Seymour & Seymour should be entered? A. No, he did not.

Q. Who first suggested that? A. Well, I guess Mr. Burns did.

Q. Now you say you "guess." Are you pretty sure of that? Is that your best recollection? A. Well, yes, I would say that Burns did suggest that.

Senator Thompson.—What is Mr. Egan's first name?

A. I don't recall.

Mr. Moss.—Did Mr. Egan say that they wanted to put in a detectaphone?

A. I don't think so.

Q. Wasn't something of that kind mentioned in the conversation? A. I don't think so, Mr. Moss.

Q. In general talk? A. Well, it might have been. This thing has been going on for so long that it is pretty hard to give it to you definitely, but Burns told me that—I mean Egan told me, after I had told him that I was willing to help him, that Burns would come to me. Burns subsequently came, I think the same day, and told me that he had made arrangements in the meantime with the tenant who had the room adjoining Seymour & Seymour, and that with my permission he wanted to put a detectaphone in the Seymour office, from this adjoining office. I sent for Mr. Coley and introduced Mr. Coley to Mr. Burns and told him to give him any assistance in his power, and that was how Mr. Coley came in.

Q. How long after Mr. Egan was with you did you see Mr. Burns, do you remember? A. Well, I think Mr. Egan saw me at eleven o'clock in the morning and probably Mr. Burns came in about three or four o'clock in the afternoon. I couldn't say for sure.

Q. Do you know what position Mr. Egan holds in the firm of J. P. Morgan & Company? A. Well, I couldn't say exactly. He is a pretty important man down there.

Q. Well, is he a member of the firm or an employee? A. I don't think that he is a member, and I wouldn't say that he is not. He is an important man in that organization.

Senator Thompson.—We will suspend now until 11 o'clock Monday morning.

Adjourned till Monday, May 22.

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**MAY 22, 1916**

**MORNING SESSION.**

The Committee came to order at 11 A. M.

Senator Thompson.—The Committee will come to order. Mr. Swayze and the general manager of the telephone company will be here in a very short time, and will take the Committee up to see the switchboard which they have at 58 West Houston street; they are going to take us up to show it to us.

Inasmuch as Commissioner Woods hasn't got our request that he be present this morning, we will suspend until half-past two, when the Committee will come to order.

Mr. Moss.—A message has just come from Commissioner Woods; he will be here at half-past two.

Senator Thompson.—We will suspend until half-past two.

Recess until 2.30.



The Committee came to order at 2.30 p. m., Senator Thompson presiding.

Senator Thompson.—Mr. Moss and myself have been in conference with the corporation counsel, Mr. Hurdy, and Mr. Lord of the police department. And after conference we have consented that the matter of police witnesses who were subpoenaed this afternoon will be gone into to-morrow instead of to-day, at their request. The mayor will be here to-morrow at 11 o'clock.

Mr. Moss.—Now, Mr. Chairman, I have a little formal testimony which I think is necessary to fill out Mr. Swayze's testimony, and I will call Mr. Stewart.

MR. STEWART is sworn, and takes the stand:

Mr. Moss.—What is your position in the New York Telephone Company?

Mr. Stewart.—General manager of the New York Telephone Company.

Q. General manager. Will you give your full name? A. James A.

Q. You are familiar with the subject of letting the police in on subscribers' wires? A. Yes, sir.

Q. You have a knowledge of the details of that process, haven't you? A. In general, yes.

Q. You have oversight of it? A. Yes.

Q. We had as a witness recently Mr. Swayze, your general counsel, who produced a list of what we call "taps," which was presented to the Chairman of the Committee. And he testified that he received it in such a way as to be able to testify with confidence that it represented all of the cases since the first of January, 1915, where subscribers' wires had been tapped at the request of the police. Do you know anything about the list that he had? A. I furnished him that list, at his request.

Q. Yes, you furnished him that list. Did you furnish him with the original requests? A. I furnished him with the original requests.

Q. Yes. And he stated that he made up the list from those original requests, and he says so now. Mr. Swayze?

Mr. Swayze.—Yes.

Mr. Moss.—Now, can you state positively, Mr. Stewart, that those papers which you gave to Mr. Swayze represented all of the cases since January 5th, 1915, where the police department had been permitted by you, by your company, to listen-in on the wires?

A. (Mr. Stewart).—Yes, sir.

Q. Now, I asked that question because it has been ascertained in some quarters that there had been many more listenings-in to wires than the three hundred and fifty, approximately, that were reported. But I understand your answer to be that following the system which had been inaugurated, whereby the signature of the commissioner of police would be required, you had no knowledge in your company of any other listenings-in than that which was represented by those requests given to Mr. Swayze, and by him recorded. A. The requests of the police department were only made on the basis of these letters.

Q. Yes. A. No other record was given to Mr. Swayze.

Q. Now, it has been reported that in certain cases — criminal cases — in Brooklyn, police officers have testified recently to cutting-in on wires and listening to them without having made application to the Telephone Company. I suppose that could be done? A. I suppose it could, yes, sir.

Q. And probably has been done? A. Possibly.

Q. But you would have no record of that, and no way of furnishing it? A. No, sir.

Q. As I understand it, Mr. Stewart, your company has endeavored to bring about a system with the police department by which you would have something like a voucher, in the signature of the police commissioner, for every wire that you opened knowingly to the police department? A. Yes, sir; almost a certificate.

Q. Almost, yes; and you have given us everything you know about it? A. Yes, sir.

Q. And this looks like repetition, but I will put it: If there has been any listening-in without those certificates, it has been without the knowledge of the company? A. Yes.

Q. And not authorized by the company? A. Not authorized.

Q. Now, Mr. Swayze told us something when he testified before, about oversight or censoring. There is some oversight main-

tained by the company over the wires that are used by its subscribers, even at the times when subscribers are talking, is it not so? A. That is correct. But not for the purpose of listening-in, but for the purpose of checking the operators.

Q. You say that its entire purpose is to check operators? A. That is its entire purpose, yes, sir.

Q. And if it has been used at any time in any other way than just simply to check operators, you don't know it? A. I don't see how it could be.

Q. Well, I wish you would explain, if you please, that system so that our record may show it — just tell what you'd do. A. We have for the purpose of checking the service, we have two test-boards; one located at 58 West Houston street —

Q. Fifty-eight West Houston street, yes. A. And another — that is for Manhattan — and another at 81 Willoughby street for Brooklyn. The one at 58 Houston street was the one that the senator and you visited this morning. A certain number of lines are put up every day —

Q. Well, wait a minute. Won't you please describe the testing apparatus first? Then we will bring the lines into it. A. The testing apparatus consists of small switchboards with about eight operators —

Q. Well, there are places for about fourteen? A. Well, the ultimate capacity is fourteen. There are eight or nine on now.

Q. There is a long switchboard with fourteen places, yes; and the average number of operators sitting there at one time would be eight? A. Eight or nine, yes.

Q. In front of each operator is a clock, and that clock is running so that it gives the accurate time? A. Accurate time.

Q. Each operator has before her certain reports — report blanks? A. Yes.

Q. And as she listens to the wires there she records certain things upon these report blanks as the result of her observation? A. That is correct.

Q. Now, what is she listening to? A. Well, primarily the time at which the various operations take place?

Q. Yes. A. For instance, when the subscriber takes the receiver off the hook, a lamp lights in front —

Q. And then she puts from her own clock the time down on paper? A. Yes, on the record.

Q. What next does she put down? A. Then the operator's answer.

Q. Yes. A. That is the next point; that shows the elapsed time between the time the subscriber has called and the operator has answered.

Q. Now, after the operator answers, what does she do? A. Then that record is put down.

Q. Yes. A. On this blank. And then the next point would be the time at which the subscriber called for had answered.

Q. But does she hear the conversation on the wire? A. She may.

Q. Well, she keeps her ear to the wire all the time? A. Yes. It is very difficult to tell —

Q. I understand that, but I just want to get the operation. Her ear is to the wire from the time — A. Yes.

Q. From the time the call is made until the call is ended? A. Yes, sir.

Q. And whatever is possible for her to hear on the wire she may hear? A. She may hear.

Q. I understand you to say that it is not the intention that she shall listen to the conversation? A. There is no record whatever kept.

Q. And no record is made of it other than is provided for it upon the blank — no record of the name of the subscriber? A. No; the operator working on this board don't even know the name of the subscriber.

Q. Yes; but the record that she makes shows the number of the phone? A. Number of the phone?

Q. Number of the connection? A. Yes.

Q. And the time of it? A. Time of it.

Q. So that it would be possible to locate the subscriber from — A. Yes, with considerable difficulty.

Q. Yes. Well, how many wires are in front of this operator for supervision at a time? A. How many places has she? Mr. Gordon would answer that.

Mr. Swayze asks Mr. Gordon to reply to question by Mr. Moss.

Mr. Gordon.—Why, at the office in Manhattan she may have one hundred and fifty.

Mr. Stewart.—One hundred and fifty.

Mr. Moss.—There may be one hundred and fifty lines in front of each operator. Now, how is it determined what lines this operator will listen to?

A. (Mr. Stewart).—You men what lines are put up before her to listen to?

Q. Yes. A. Oh, that is simply chosen at random.

Q. Well, who chooses? A. That is chosen in the office of the officer having charge of the service.

Q. And who is that? A. The superintendent of traffic — in the office of the superintendent of traffic.

Q. Yes. A. And the lines are simply selected at random, with the idea of having a certain number of lines for each operator on the switchboard.

Q. Well, any operator may have any line in New York City — A. Yes.

Q. Thrown in upon her board? A. Yes, yes.

Q. She has no control over that? A. She has no control over it, no.

Q. What line is to be given her to observe, she doesn't even know? A. She doesn't even know.

Q. She don't know what girl she is checking up? A. No.

Q. Now, I want to ask you if this room where the listening-in is done is a secret room? A. Not at all.

Q. Please describe its relation to other rooms and its place in the building. A. It is on the — what floor, Mr. Gordon?

Mr. Gordon.—Sixth.

Mr. Stewart.—It is on the sixth floor of this building at 58 West Houston street. It simply opens from the corridor, where there is an opening into the elevators in the usual way, and anyone can walk in.

Mr. Swayze.—That is a telephone building, Mr. Stewart.

Mr. Stewart.—Telephone building.

Mr. Swayze.—Purely.

Mr. Stewart.—It is one of our central offices.

Mr. Moss.—Well, do these operators who do the listening-in mingle with the other girls in the building who are regular operators?

A. Oh, yes; they eat luncheon there together.

Q. (Mr. Moss).—Well, do they form a class by themselves, or do you sometimes detail regular operators to that board?

A. Well, I couldn't answer that offhand. I presume——

Q. Mr. Swayze says they form a class by themselves.

A. (Mr. Stewart).—Yes.

Q. Anything else you want to say?

Mr. Swayze.—May I ask him a question?

Mr. Moss.—Yes. Anything you like.

Mr. Swayze.—The floor on which the board—supervising board—is located, is a floor to which the other employees in the building have access?

A. (Mr. Stewart).—Absolutely.

Mr. Swayze.—And the door leading into that room is marked to identify it?

A. Yes.

Mr. Swayze.—And it is generally known among the operators who have been in our employ that there is such a room, and the purpose of it is to observe?

A. Oh, yes; oh, absolutely.

Mr. Swayze.—You have here a blank form. Is this one of the blank forms that is used by an operator?

A. Yes, one of the listening-in operators.

Mr. Swayze.—We'd like to file that form as part of the record.

Blank form is put in evidence, Exhibit 1, May 22nd.

While Senator Thompson and Mr. Moss were there, they had opportunities to observe the actual forms on which the operators were working, did they not?

A. Yes, there were a number of complete forms. I think Mr. Moss saw one of them.

Mr. Swayze.— Yes. That is all I have to say.

Senator Thompson.— Well, I will say there that I saw the operators working on these boards, and sat at the board; and they were making their marks. They made no other marks — it was impossible as I see it. It would be impossible for them to understand the conversation that was going over the wire if they did the work that the blank called for, much less take it down. They couldn't possibly have taken it down.

Mr. Swayze.— And if they don't do the work they lose their jobs.

Senator Thompson.— Yes; and if the conversation going over the wire was important, you might listen to fragmentary parts of it, and wouldn't lose much. That is the situation, isn't it?

Mr. Stewart.— Yes.

Senator Thompson.— And they simply make these so many seconds from the time they are called and time hooked on, and then the conversation is so long, and the record kept as these blanks indicate. Of course it is possible for the operator to hear something.

Mr. Swayze.— I would like to ask Mr. Stewart another question: There are no secret boards installed in New York that you know of, are there?

A. (Mr. Stewart).— No, sir.

Mr. Moss.— Have you heard of any such boards?

A. (Mr. Stewart).— Never heard of them.

Q. (Mr. Moss).— Within the company.

A. Never.

Q. Well, I refer to "in the company." I don't mean out.

Mr. Swayze.— You'd know if there was such a board?

Mr. Stewart.— Oh, absolutely.

Mr. Moss.— Is there any other board on Manhattan Island where any persons may listen-in on the wires of subscribers using their telephone system?

Mr. Stewart.— Of the telephone company?

Q. (Mr. Moss).— Well, no; of anybody?

A. (Mr. Stewart).— Well, nothing, except these “police boards.”

Q. Well, there is the police board, yes. Well, now, are there any other boards which would accommodate as many persons as you had operating up there — approximately that? A. I don't know of any.

Q. Where persons of any kind may listen-in? A. I don't know of any.

Q. Is there any other board that you know of or ever heard of maintained by your company or anyone else with time-clocks equipped for the purpose of listening-in on wires? A. I don't know of any such boards.

Q. Did you ever know or hear of such a board in the neighborhood of 26 Broadway? A. Never.

Q. Speaking of the present board, where was such a board located before it was at 58 West Houston street? A. In our Franklin Central office on Franklin street. We had to move on on account of the lack of room.

Q. And where before? A. In Eighteenth street, in our Eighteenth street Central office. Moved for the same reason.

Q. And where before that? A. At 15 Dey street. It's been moved.

Q. Fifteen Dey street. That was the office of the company? A. That was.

Q. Did you know of such a board being anywhere before it was at 15 Dey street? A. I don't know. I think —

Q. Did you think it was originally installed at 15 Dey street? A. I couldn't say. That is the first one I remember.

Q. How long have you been with the company? A. About twenty-three years.

Q. How long have you been manager? A. About four years.

Q. What was your relations to the company before that? A. I was superintendent of plant.

Q. Well, then, you have been in position for twenty odd years to have known if there was such a board, haven't you? A. I think so.



Mr. Moss.— I think that is about all that is necessary.

I don't understand this question that someone hands up — how about calls from pay stations? Does that mean whether he supervises those calls?

(Newspaperman who handed question: Yes.)

Are the calls from pay-stations supervised?

A. (Mr. Stewart).— No, except to see that the coins drop in, that is all.

Senator Thompson.— Well, there might be a pay-station under supervision just the same as anything else?

A. Yes, just the same as any subscriber.

Senator Thompson.— A few of them during the day; as we say over there, there might be a pay-station on that line, or anything else. There can be upwards of 159 of them under observation. It might be a pay-station.

Mr. Stewart.— Yes. Is that all, Senator?

Senator Thompson.— Yes.

Mr. Stewart leaves the witness stand.

Mr. Swayze.— You don't need Mr. Stewart or Mr. Gordon any longer, do you, Senator.

Senator Thompson consults with Mr. Moss.

Mr. Stewart and Mr. Gordon are excused.

Senator Thompson.— I want to put in evidence this: It is a statement made by the Interborough gentleman in charge of motive power, in regard to questions which came up in regard to the excess power at their power generating stations the day we had the matter before the committee. He makes an "Estimated Total Cost of Power At The A. C. Bus Of The Interborough Rapid Transit Company's Power Stations." Presented from Motive Power Department, May 11th, 1916. I think that is the day he (Mr. Statt) was on the stand.

Put in evidence, Exhibit No. 2, May 22nd, 1916.

(Copy)

IRT 3026

New York, May 11, 1916.

ESTIMATED TOTAL COST OF POWER AT THE  
A. C. BUS OF THE INTERBOROUGH RAPID  
TRANSIT COMPANY'S POWER STATIONS.

(Motive Power Dept., May 11, 1916.)

The figures given in this report are the average estimated costs of power for a period of five years ending December 31st, 1922.

From a predetermined schedule representing the probable average operating service required for the next five (5) years, the power requirements were determined for each electrical section and from these the load on each power station was computed after allowing for distribution, conversion and transmission losses. On the basis of the computed coincident power demands on each power station, the total operating and maintenance costs, also the total investment costs, were determined.

It is probable that there may be a slight difference in time differential in both systems, as compared with that of the present systems, which in turn will have a corresponding effect upon the load factor and also the cost of power. Just what the time differential will be on both Manhattan and Subway systems for an average period of five (5) years is problematical, as there are many factors involved which cannot be determined at this time. Hence, to simplify the computations the following approximate average daily load factors of load were used, namely 50 per cent for Manhattan power station at 74th street, and 55 per cent for Subway power station at 59th street.

In determining operating costs for both power stations when all improvements are made, the efficiency ratio (Rankine cycle) and thermal efficiency of additional prime movers to be installed were assumed to approximate that of the compound units at present in operation at the 74th Street Power Station.

The costs computed in this report are on the basis of each power station generating its own power, that is, there will be no appreciable interchange of power between the two stations.

#### GENERAL.

Following are the main items included in the estimated cost of power contained in this report:

- a. Interest on all equipment that will be in service.
- b. Interest on all equipment that will be disposed of, transferred or sold to provide for an increase in capacity for Interborough Rapid Transit system.
- c. Interest and legal expenses, etc., during construction, for both Manhattan and Subway systems.
- d. All engineering, construction interest, legal expenses, etc., for the entire original equipment of the Manhattan and Subway systems — pro-rated to determine charge against motive power department.
- e. Real estate taxes on land, building and equipment remaining, of Manhattan power station at 74th street. Taxes were computed for 1920 and taken as an average for five (5) years ending December 31st, 1922, on the basis of increase in tax rate during the past five (5) years.
- f. Real estate taxes on all real estate and building (only) of subway power station at 59th street — on basis of estimated assessed value in 1920, as determined under item e.
- g. Amortization of all new capital expended for Manhattan and subway systems, that is for completed Manhattan improvements, proposed Manhattan improvements and Contract No. 3.
- h. General expenses or administration costs based on an estimated average for five (5) years ending December 31st, 1922, for Manhattan and subway systems separately.
- i. Taxes on gross earnings, estimated for 1920, which is taken as an average for the period of five (5) years in question.

Rate for Manhattan, 1 per cent.

Rate for subway,  $\frac{1}{2}$  per cent.

j. Estimated total operating expenses including accident and damages, also general expenses for 1920, which is taken as an average for five (5) years ending December 31st, 1922.

k. Total yearly charge to accident and damages for the entire system estimated for 1920 as an average for five (5) years.

l. Special franchise tax (for Manhattan system only) estimating an average for five (5) years ending December 31st, 1922, and applying the tax rate as determined under item e.

The portion of items j, k and l chargeable to the motive power department is determined on the basis of *total cost of operation and maintenance of the motive power department for each system (excluding fixed charges and power received from the other system), to the total operating expenses of each entire system less general expenses less accident and damages.*

The result is then pro-rated on the basis of cost of operation and maintenance to determine separately the portion chargeable to power station, A. C. feeder system, sub-stations, and D. C. feeder system. With this method, no charge for accidents or damages are charged to cost of power.

m. Cost of operation and maintenance of the motive power department for each power station including all labor and materials chargeable to each.

n. Cost of all mechanical and electrical losses determined separately for each power station and included in the cost of power at the A. C. bus.

o. Telephone system — Interest, depreciation, operation and maintenance, also rental charged to the power station on the basis of number of phones in service.

p. Lighting feeders — A portion of these charges included in the cost of power.

q. Functional depreciation to provide for lack of adaptation to function, caused by obsolescence and inadequacy has been included for all equipment of the motive power department entering in the determination of cost of power with

the exception of land, which it is assumed will not depreciate.

The first operation in determining these charges is to establish a "life expectancy table," based on past experience, knowledge of the art and careful judgment as to the probable life of apparatus and property, for the main items involved in the Interborough Rapid Transit system, as follows:

LIFE EXPECTANCY TABLE.

Property.	Total life. (Years.)
Real estate (assume does not depreciate).....	....
Building . . . . .	75
Boilers, stokers and furnaces.....	30
Conveyors, elevators and hoists.....	20
Reciprocating units — complete . . . . .	20
Turbine units — complete . . . . .	20
Exciters . . . . .	30
Piping, valves and traps.....	20
Pumps . . . . .	20
Transformers, etc., in power station.....	20
Switching apparatus, etc.....	20
Tools. . . . .	20
Miscellaneous . . . . .	20
(Outside of Power Station.)	
Feeders . . . . .	25
Ducts . . . . .	40
Sub-station equipment . . . . .	25
Sub-station buildings . . . . .	75

The next step is to determine the original cost and the estimated scrap value of each of these items for each scheme separately, given on page 1. The original cost of each item to be complete and include purchase price, engineering, interest and legal expenses during construction, etc. The third operation is to deduct the estimated scrap value from the original cost of each item and apply the straight line law

at the rate given in the Life Expectancy Table, to determine the amount to be set aside annually for each of these items for functional depreciation.

### COST OF POWER.

On the basis as outlined above the estimated average total cost of power per kilowatt net-output at the A. C. power station bus, covering a period of five years ending December 31st, 1922, will be:

		Cents per Kw. H.
		Net output at
Power Generated at P. S.		A. C. P. S. bus.
Seventy-fourth street:		
Fixed charges .....		.3433
Operation and maintenance.....		.3527
		<hr/>
Total .....		.6960
Fifty-ninth street:		
Fixed charges .....		.2762
Operation and maintenance.....		.3535
		<hr/>
Total .....		.6297

These figures are on the basis of the average estimate kilowatt net-output for five (5) years ending December 31st, 1922, which was computed from an estimated schedule of operation.

### EXECUTIVE SESSION.

Present.—Senator Thompson, Mr. Moss, Mr. D. A. Reynolds, and Mr. Calvin D. Van Name.

(Executive session held shortly following conclusion of afternoon public session)

D. ALBERT REYNOLDS:

Mr. Reynolds is sworn by Senator Thompson:

Mr. Moss.—First, Mr. Reynolds, what is your first name?

Mr. Reynolds.— D. A.— D. Albert.

Q. (Mr. Moss).— And your office is where?

A (Mr. Reynolds).— Ten Wall.

Q. Now, you have said something about a switchboard that used to be, and perhaps is still, in the neighborhood of 26 Broadway. A. I was told there was one there ten years ago.

Q. Who told you that? A. A fellow by the name of Benton, I think it was.

Q. Benton. Did Benton tell you that personally? A. Yes.

Q. What had Benton to do with it? A. He was the one that installed it for the New York Telephone Company.

Q. Benton was an electrical engineer? A. Yes. Brought here from Seattle.

Q. And you suppose he is gone back to Seattle? A. Oh, yes; that was ten years ago. He went back, and came back at my expense, and was here two or three months.

Q. Yes. Did you have some business with Benton? A. No. I was interested in an opposition telephone company, and I wanted the information that he had.

Q. I see; what was the name of your company? A. The Great Eastern Telephone Company.

Q. You'd been trying to get into New York? A. About ten years.

Q. Have you some suit pending? A. Yes. We are going up the third time now. We go before the Court of Appeals next Wednesday.

Q. Who is the case against? A. The Empire City Subway Company — first against the city, then against the Subway Company, and now against the city and subway —

Q. You want to get into the ducts? A. Yes.

Q. And they refused you permission? A. Yes.

Q. Won't even let you pay for it? A. No.

Q. Have you got any printed papers in that case? A. Oh, yes. There is a record of eighteen hundred pages.

Q. Yes. And if you have an extra copy would you mind sending it to us? A. I'd be glad to furnish it.

Q. Now, I wish you'd tell us a little more in detail what Benton said to you. A. Benton got acquainted with Mr. Babcock,

the man in charge of my canvass at first, and Mr. Babcock introduced him to me. He told Babcock that he was installing what he called a "blind switchboard," and after a number of meetings I asked him about it in detail; and he gave me a full description of it. He told me about a week or ten days after it was installed that he would like to stay in New York, but they were going to send him back to Seattle.

Q. Who was going to send him back? A. The New York Telephone Company. And I told him we had no work for an electrician at that time; he was an expert and we were only making our canvass. He went back and later I got a letter from him and I sent him money to come to New York, for the purpose of knowing what the switchboard was for and where it was installed. And after he was back we had two or three meetings, and he was loath to tell me where the switchboard was; until one day we stood in our office at 32 Broadway looking across the areaway between that and No. 26 Broadway; and I said to him, "I think you owe it to me to tell me where that switchboard is located." He says, "It is within 100 feet of where we are now standing." I went through No. 32 Broadway and couldn't find it. This information was given to the World last week, and it appeared in the World, I think of the 19th. And to-day I received a letter from a man that assisted in installing a switchboard there, and I brought you the original. (Hands letter to Mr. Moss.) That simply is a verification of my statements.

Q. This is a letter which you received by the mail? A. This morning.

Q. This letter is signed H. S. Mustin, care of Fred S. MacDowell, Goshen, New York. I haven't read this yet. Suppose I read it now. A. I have —

Mr. Moss.— Well, I will read it into the record:

"I was greatly amused to read the account in the New York 'World' of to-day regarding your statement about the switchboard at 26 Broadway. As nearly as 1891 there was such a board there, and I was instructed to never speak of anything I didn't want to supervise, when called upon in that building. A man who can give you full details of the



location of this board, which is in the engine-room and near where the pneumatic tubes were located, and also of the cables and wires connected to it, is Mr. Charles S. Black, of New York, who was at that time expert for the Self-Winding Clock company. The clock company's office was in the basement of 26 Broadway; and Mr. Charles Pratt of the Standard Oil Company was either president or vice-president; Frank Sutton was general manager; and I was custodian of the Electric Time Company, of which Edward S. Mendels, at that time of Spencer Trask and Company, was receiver.

I had deals on with both Black and Sutton in relation to time service, and afterwards worked for S. W. Clock Company in assisting Black to locate some wire trouble in the directors' board room of the Standard Oil Company. Black showed me the wires of the special phone system and cautioned me not to 'cut in' on them. I was afterwards inspector of time service for the Western Union Telegraph Company, who were under contract to furnish time service to these clocks, and it was in connection with the Gold and Stock Telegraph Company's wires that this service was conducted. I was able to secure admittance anywhere upon showing my credentials, and I discovered many unknown lines which I traced to their ends. Private phones were scarce in those days, owing to the transmitter patents being forced, and the phones were procured through export houses, made by a few instrument-makers. Black and I made a number of instruments in a laboratory which we had on Eighty-first street near Third avenue. We also made recording current meters for the United States Coast Survey. Prior to time service work Black was connected with Black and Pfister, makers of self-recording meteorological instruments. Mr. Pfister, I understand, is now an instructor at Columbia College, or was when I last heard of him.

The board Mr. Benton placed is probably the second or third installed in 26, and I surmise that the board was put in without his gaining much knowledge of the earlier board, as it was a rule to be 'deaf, dumb and blind' about what

you saw or heard in the building. And Black and I never talked to outsiders about things.

I have taken the liberty of writing you these details as may give you some knowledge. That condition existed long before the date mentioned in the paper, and I appreciate the insufferable condition imposed upon a phone user who feels that every word he says over his phone is subject to espionage. We had the best of them, as knowing the condition, we not only used a 'code,' but by means of small portable outfits we made use of other circuits which we temporarily converted into phone lines. I am not seeking any notoriety, and if the little information I have given you aids you in any way, you are welcome to it, or any further details that I can furnish you. The observatory in Central park is fitted, or was, with self-recording instruments of Black's, and as he furnished renewals and supplies for them the last I heard of him you can likely locate him through Professor Drape. You are at liberty to refer to me in event of your reaching Black. And I think my circuit books, W. U. blanks, and other papers are in existence to corroborate my statements.

I have been in cities where the automatic phone was in competition with the Bell, and I have always heard the 'non-listening' feature highly spoken of. And I believe the tapping of lines is detrimental.

Yours very truly."

Mr. Moss.— Now ——

Mr. Reynolds.— I regard it as a verification of Benton's story to me.

Q. (Mr. Moss).— Yes. Well, did Benton describe it — the switchboard that he installed there?

A. (Mr. Reynolds).— Yes.

Q. What did he say about it? A. He said it was a twelve-position board — that is, twelve operators; that they were provided with head-pieces, but no transmitters; that the clock was suspended in front of the board and that each girl had to record the time

every fifteen minutes with her stenographic notes; that back of the board was a cross-connecting rack, and a man there received the orders. The girls never knew what line they were supervising, and never knew anything except what they gained from taking down the conversation over the lines; he, on the other hand, knew nothing of what was going over the lines. He kept a record of when each line was tapped or connected, and by comparing his notes of the girl on that position, the central office was able to know whose line had been what they call "supervised."

Q. Yes. Well, isn't it possible, Mr. Reynolds, that this switchboard was a private switchboard for use entirely inside of the Standard Oil Company's offices? A. It's possible, but hardly probable; because he stated to me that there were 275 pairs of wires coming into that switchboard, and those run to all of the other exchanges in the city.

Q. Yes. If that was so it would not be private, would it—it couldn't.

Senator Thompson.—Not if it ran to all the exchanges.

Q. (Mr. Moss).—Well, that is all you know about it, I suppose?

A. (Mr. Reynolds).—That is all I know about that board.

Q. Yes. Well, I will look into the subject of this letter here while you are here. Is there anything you want to say about the relations to the company? A. I don't think it ought to come in at this investigation, though if the Committee goes into the subway question, I could undoubtedly give you a lot of information there, because we have been in litigation with them seven years.

Q. You mean the conduit? A. The conduit company.

Senator Thompson.—Well, we will go into that. You know the city has a right to recapture that.

Mr. Moss.—Did you get that little brief that I sent you?

Senator Thompson.—Yes.

Mr. Reynolds.—I will say this, Mr. Moss, in regard to taking over those conduits.

Mr. Moss.—You mean the recapture right?

Mr. Reynolds.—How's that?

Mr. Moss.—Recapture right.

Mr. Reynolds.—If you will read the fifteenth paragraph of that contract made with the subway commission, you will see that the city can take it over in forty-eight hours, at any time that they wish.

Q. (Mr. Moss).—Well, hasn't the system been handled in such a way as to make it a very burdensome thing to take now?

A. (Mr. Reynolds).—No. I believe, and I have very good reason for believing, that if the sinking fund commission were to pass a resolution taking over the conduits, and settle with them afterward, that they would find that enough is due to the city to more than pay for the system.

Q. Hasn't there been litigation going on for a good many years whereby the city is going through the form of trying to force a settlement? A. Yes. But it is rather amusing to the man that knows how. I have heard the counsel—and my counsel are a unit on it—stating that the city, if they really wanted to, could take over the subways in forty-eight hours.

Q. Well, the contract provided that the city should get the profits in excess of ten per cent. A. That is right.

Q. The company could not get any more than ten per cent? A. That is right.

Q. But when ten per cent was reached the city would have the balance? A. Now the city hasn't got anything.

Q. The company has never apparently earned more than ten per cent? A. No; I know it. The annual rental of those subways to-day should be about \$1,600,000.

Q. Rather a large sum. A. There are \$800 marked out for the two and one-half and \$1,000 marked out for the three-fourths.

Q. Well, that is pretty heavy, isn't it? A. Yes, it is heavy. It brings them about \$1,800.

Q. Have you ever learned anything about the method followed by the company to prevent itself from having more than ten per cent profit? A. I have heard—and it comes from inside sources which I couldn't make use of—that they have organized two com-

ponent companies on the inner circle. I understand that Mr. Cutler owned ninety-six per cent of one of them and ninety-eight per cent of the other. And one of those companies, as reported to me, received \$100 a year per mile duct for maintenance.

Q. For maintenance? A. For maintenance. And the other the same price for operation. And the entire cost of operating a duct mile in systems that I own and control is not over a dollar a year.

Mr. Moss.—Yes.

Senator Thompson.—Who did you say owned the stock in them?

Mr. Moss.—Mr. Cutler.

Mr. Reynolds.—Cutler used to be the president of the New York Telephone Company.

Q. (Mr. Moss).—Yes. Well, did you notice a systematic plan by which the company put what might be its surplus profits into plant?

A. (Mr. Reynolds).—I haven't followed that closely.

Q. I remember this matter; during the period of the Mazet investigation, you will find quite a little of it in the record then; and it seemed at that time that the company unduly extended its system — that is, built ducts where it didn't need them, ducts that it couldn't use; blew in, so to speak, its profits into plant; which they could afford to do, because it increased the amount that the city would have to pay for some day. A. The building of conduits — the great expense of building conduits is opening the trench.

Q. Yes. A. The cost of the conduit is about four and an eighth cents a foot. There are places up on the West Side where there is 144 ducts, so that a mile of trench would carry 144 miles of ducts. In that one particular place where it was reported to me there are but six of the 144 ducts in use. Yet under the contract, yet under the contract they could draw one hundred and forty-four hundred dollars for each line, which would make it \$2,880 for maintaining and operating that mile of trench. And the cost of it wouldn't be a dollar a year.

Q. There is where the cases show up. Well, now, I want to ask you this — we are just outside of the subject. You remember

once they built a great number of ducts alongside of the tracks of the street railroads? A. I do.

Q. The thought was — at least the claim by the company was — that it was going, they were going, to run their own wires and use their own power. And it was suspected at that time that they were supplying current commercially. Have you any knowledge as to whether those were ever used? A. I understand that when that came up, there was considerable in the papers, and I had means of knowing some of the inside workings, and the papers claimed that those extra ducts were for trunk lines for an independent telephone company. And Mr. Cutler and I went to Mr. Whitney, who was interested in the matter, and received from Mr. Whitney an assurance that it never would be used for low-tension cable. It was a gentlemen's agreement, and the Bell Company receded from the action that they brought against them, and they were allowed to go ahead and build them. But I felt at that time that it was a foolish attitude to take, because it would be practically impossible to put a low-tension lot of cables so close to a high-tension current; the electrolysis would eat up the cables in no time. It would be a very dangerous thing to do. So I don't think it was ever intended for that.

Q. Well, do you believe those ducts have been put to use? A. I think so, for conveying heavy currents.

Q. Used by themselves? A. Yes, by themselves.

Q. But not any other one? A. I don't think so. They wouldn't need —

Q. Do you believe that the ducts are now used for the cables that operate the surface cars? A. Yes. It is necessary for them to have feed.

Q. Yes. A. And those are ducts. It wouldn't be applicable to the electric light people because they have to have an opening into each building that they supply. There is this difference between the heavy current, or the Consolidated ducts, and the Empire, which is the low-tension ducts. With the low tension, you go one place into a back yard and distribute from the back of the building for telephone, fire-alarm purposes, and such things as that. But for the heavy currents you must make your entrance for each building; so that if they tried to use them, tried to use them for conveying heavy current, they would lack the distribution.

Q. I see. A. So I don't think it is practical.

Q. Well, your printed papers show the contract with the city?

A. What is that?

Q. Will your printed papers show the contracts with the city?

A. Yes, the contract with the Empire and the other you will find in the report of the subway commission.

Q. Yes. That is all I think I want to ask you to-day.

Senator Thompson.—Has your company a franchise?

A. Well, the Great Eastern Company has no franchise. It obtained control of the New York Electric Lines Company.

Senator Thompson.—Which has a franchise?

A. That had a franchise. It was uncertain whether that franchise was valid. It was granted in 1883. And our interests took an option on the stock to be exercised if the franchise proved to be valid. We went to the city for the rights to commence building under the franchise, which held out for about five months and refused the rights, and three or four days before we were notified that the rights were cut, and the board of apportionment, without notice to us, or without any legal action of any description, passed a resolution revoking the franchise for the New York Electric Lines Company. We then applied to the Supreme Court, Justice Bischoff, for a mandamus against the city. And they came in and argued that the company's charter had expired because of not commencing business within a year; and that the franchise, if it ever was good, was no longer efficient because it had been revoked by the board of apportionment. Judge Bischoff, after reviewing the case very thoroughly, decided that the charter was valid and that the franchise was an irrevocable contract with the city, but denied us the right to build conduits on the ground that the conduit system had been built since the franchise was granted and that we must put our wires into those conduits.

Senator Thompson.—You got a franchise — if you could use the conduits you'd get a franchise?

A. Yes. We felt that in as big an enterprise as was contemplated that we ought to have the highest court of the State, so we appealed on that one ground, for the right to lay conduits, and

went to the Court of Appeals. And there Justice Chase wrote it. He decided that the essential purpose of the charter and of the franchise was to lay electric conductors, and that our rights in that respect had not been materially or essentially violated or impaired; but that since the franchise was granted the comprehensive conduit system had been built and that the wires of the relator shall be placed in the conduits constructed in accordance with the general plan instead of allowing the relator to build its own conduits.

That was our decision. On the strength of that we raised about \$600,000 in cash and wrote one million and a half of underwriting to build our first plant. Then we went to the subway company, tendered them the rental for the first year, \$5,000, and a bond for five years additional rental, and demanded the conduits, in accordance with the decision of the Court of Appeals. They refused and we brought mandamus proceedings and went to the Court of Appeals a second time. And there Judge Hay wrote it, and decided that the franchise which they had sustained about three years before was nothing but a revokable license, and that it had been revoked. Consequently we had nothing. We then went to the United States Supreme Court, and there Judge Hughes wrote the opinion, declaring that the franchise was a franchise, but it might have been lost by non-use or misuse, but that was a question for the State court to decide. Next Wednesday we argue it in the Court of Appeals the third time upon that question.

Mr. Moss.—Who are your counsel?

A. Judge Parker has been with us for ten years and a half; Judge Gildersleeve since he left the bench; Judge Aspinwall Hodge, Alexander S. Bacon, and C. L. Wiston.

Mr. Moss.—Mr. Alexander S. Bacon? I know him very well.

A. In the Court of Appeals the first time, Judge or Governor Hill argued the case; and in the earlier litigation I had Black, Allcott, Druyer and Bodage.

Mr. Moss.—I guess you have had as good as you can pay for.



CALVIN D. VAN NAME:

At executive session, following testimony of Mr. Reynolds.

Mr. Moss.—Now, Mr. Van Name, I want you to kindly tell us about the operations of your railroad company down there, and the orders made by the Public Service Commission, proceedings in court whether those proceedings have resulted in any improvements of conditions.

Mr. Van Name.—No improvement has resulted from any proceedings taken before the Public Service Commission by the people of Staten Island. Some time ago the people along Castleton avenue, a thickly populated locality, through the West New Brighton Board of Trade, took proceedings before the Public Service Commission to compel the Richmond Light and Railroad Company to put down an additional track in Castleton avenue; the operation of the single track there causing many vexatious delays to the people. There was a hearing—a trial it could be called—which resulted in an order made by the Public Service Commission directing that the Richmond Light and Railroad Company lay an additional track. From that order an appeal by certiorari or otherwise was taken to the Special Term of the Supreme Court, and the order of the Public Service Commission was upheld. Then there was an appeal from the Special Term to the Appellate Division, and the Special Term was affirmed. Then there was an appeal to the Court of Appeals by the railroad company and that appeal resulted in an affirmance of the decision of the Appellate Division.

There are no conditions; all of the orders of the Public Service Commission and of the courts are absolute; and yet, apparently, there is no force in them; there seems to be no power in the Public Service Commission to enforce its order, even after a ratification by three courts, including the highest in the State. The additional track has not been laid and the people are crying out for an enforcement of the order of the Public Service Commission.

Now, may I go on to say—the Public Service Commission has been very expensive to Staten Islanders; we pay our share for its

upkeep. It produces nothing for us, and it is one of the causes of the strong feeling on Staten Island for secession. A straw vote on the question of secession was taken a few days ago at the ferry-houses and in the theatres on Staten Island and resulted in a vote of 4 to 1 in favor of Staten Island seceding from the greater city, and incorporating as the city of Staten Island.

Of course that is only one of the causes; there are many other causes. Nothing has been done by the Public Service Commission in the way of a subway to Staten Island.

Mr. Moss.—Please state your official relation to the borough of Richmond.

Mr. Van Name.—I am president of the borough of Richmond, and a member of the board of estimate and apportionment of the city.

Adjourned until May 23 at 11 A. M..

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**MAY 23, 1916.**

**PUBLIC SESSION.**

(Morning.)

The Committee was called to order at 12 o'clock by Senator Thompson.

Mr. Moss.—I would like to read into the record a little testimony given by the borough president of Richmond, given in executive session, not relating to wire-tapping, but on the general proposition before us.

“Testimony of Calvin D. Van Name, president of the borough of Richmond, city of New York, before Thompson Public Service Investigation Committee in executive session on the afternoon of Monday, May 22d, 1916:

“Mr. Moss.—Mr. Van Name, I want you to kindly tell us about the operations of your railroad company down there, and

the orders made by the Public Service Commission, proceedings in court, and whether those proceedings have resulted in any improvements of conditions.

“Mr. Van Namee.—No improvement whatever has resulted from any proceedings taken before the Public Service Commission by the people of Staten Island. Some time ago the people along Castleton avenue, a thickly populated locality, through the West New Brighton board of trade, took proceedings before the Public Service Commission to compel the Richmond Light and Railroad Company to put down an additional track in Castleton avenue, the operation of the single track there causing many vexatious delays to the people.

“There was a hearing, a trial it could be called, and it resulted in an order made by the Public Service Commission directing that the Richmond Light and Railroad Company lay an additional track. From that order an appeal by certiorari or otherwise was taken to the Special Term of the Supreme Court, and the order of the Public Service Commission was upheld. Then there was an appeal from the Special Term to the Appellate Division, and the Special Term was affirmed. Then there was an appeal to the Court of Appeals by the railroad company, and that appeal resulted in an affirmance of the decision of the Appellate Division.

“There are no conditions. All of the orders of the Public Service Commission and of the courts are absolute, and yet, apparently, there is no force in them. There seems to be no power in the Public Service Commission to enforce its order, even after a ratification by the three courts, including the highest in the State. The additional track has not been laid and the people are crying out for an enforcement of the order of the Public Service Commission.

“Now, may I go on to say — the Public Service Commission has been very expensive to Staten Islanders; we pay our share for its upkeep; it produces nothing for us, and it is one of the causes of the strong feeling on Staten Island for secession. A straw vote on the question of secession was taken a few days ago at the ferry-house and in the theatres on Staten Island, and resulted in a vote of 4 to 1 in favor of Staten Island seceding from the greater city and incorporating as the city of Staten Island.

"Of course, that is only one of the causes. There are many other causes. Nothing has been done by the Public Service Commission in the way of a subway to Staten Island.

"Mr. Moss.— Please state your official relation to the borough of Richmond.

"Mr. Van Name.— I am president of the borough of Richmond, and a member of the board of estimate and apportionment of the city."

Senator Thompson.— It was understood yesterday morning that the mayor would be here at eleven o'clock. That was because of the attitude of the Committee, which has been unchanged, to the effect that we were a public committee, and as to anything within the province of our investigation, we are ready to hear anybody who desire to bring anything before us that is relevant to the subject which this Committee is investigating.

Of course, as we hear subjects and take them up, it becomes necessary for the Committee to understand the facts so as to know what a person might be intending to enlighten us on. Sometimes the question of time when a man can be heard is not always agreeable to both the Committee and the person who desires to be heard. It depends upon the subject. However, since last Friday the Committee has been in the position that they will be glad to hear from the mayor any time when he desires to appear, and we have not, so far as the facts have been developed before us, been in any position to enforce his appearance before the Committee or to attempt it.

I don't care to say, except to refer to it, that the developments of the grand jury in Kings county this morning were rather abrupt, and whether that has any connection or not, the mayor has asked to be excused from appearing this morning and the Committee have indicated to him that they will be glad to hear him this afternoon or to-morrow or any time that he desires to come. It is entirely within his judgment as to whether he desires to come or not.

Mr. Moss.— The arrangement this morning was at his request.

Senator Thompson.— Yes, there is no question about that; and I understand now that there are no cumulative traitors on this

Committee or connected with it. So the Committee will go on with its regular investigation in the manner in which they appeared, and will continue, as Mr. Moss said, on this line if it takes until July first, paraphrasing someone —

Mr. Moss.— Paraphrasing another man with a full beard.

Senator Thompson.— Therefore, apologizing to the people who came here this morning, possibly expecting to be able to see some person of note, we will order an executive session now. All who are here as witnesses or otherwise at the request of the Committee will remain, and to the rest we will say we are sorry to see you go out into this rain to-day and sorry it is not a nicer day outside.

Mr. Moss.— In order that there may be no misunderstanding, we may ask the policemen to remain.

Senator Thompson.— We want the policemen, the corporation counsel and everybody like that to remain, and Mr. Swayze.

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## EXECUTIVE SESSION.

(First.)

The session was called to order by Senator Towner.

MR. JACKSON was called to the stand and sworn:

Senator Towner.— State your full name.

Mr. Jackson.— Harry M. Jackson.

Mr. Swayze.— The subpoena was issued for Henry W. Jackson, and I had the auditor of the company go over the pay-rolls and report to me as to whether there was any Henry W. Jackson, and he made the following report to the general manager in answer to my request regarding Henry W. Jackson:

“ This is to advise that there is no one by that name employed by the company at the present time.” That would include the

pay-roll of the New York Telephone Company in New Jersey and in New York, as I understand it, so I then asked who we had by the name of Jackson, and amongst others Mr. Harry J. Jackson was named, who has the position, I believe, of installer. I talked to Mr. Jackson myself this morning, and possibly he is not the man, but if there is any other Jackson that we have that you can find among our forty-eight thousand employees, of course we will produce him.

Mr. Moss.—Mr. Swayze, we are very thankful for your assistance.

Mr. Jackson, you understand you are in executive session now. This is not public testimony. The newspaper men have been sent out, and this is the Committee, and Mr. Swayze is here by invitation. Now, we want to talk to you frankly and freely.

Q. What position do you hold in the company?

Mr. Jackson.—Installer.

Q. How long have you been there? A. Well, I have been seventeen years in New York.

Q. Did you ever talk to Mr. Slade, who is sitting here in front of you? A. Yes.

Q. Now, did you ever talk to Mr. Slade's brother? A. I think so.

Q. What we are interested in, Mr. Jackson, is connections that have been made by which one person could hear another over the wires. Have you ever assisted upon any work of that kind? A. What do you mean — private work?

Q. Yes. A. No, sir.

Mr. Swayze.—Before Mr. Jackson answers, I will say that Mr. Jackson informed me in my office this morning that in the case of a large business concern here in New York, which had nothing to do with Mr. Slade by any possibility, they desired to censure their own employees and he did do some installation on that. I have no particular objection to giving to the counsel the name of that concern.

Q. I am not going into that. I will take your assurance as to that.

Mr. Swayze.—The matter you told me about where you had installed an instrument in order that a business concern might watch its own employees had nothing to do with Mr. Slade by any possibility, did it?

Mr. Jackson.—Nothing at all.

Mr. Moss.—Well, did you ever connect Mr. Slade's wire with any other wire?

Mr. Jackson.—No, sir.

Q. Or Mr. Slade's office with any other office? A. No, sir.

Q. Wasn't there a connection from Mr. Slade's office to a man named Fitzsimmons, a detective agency in 115 Broadway? A. Not that I know of.

Q. Did you ever say there had been? A. No, sir. That is the first I have heard of it — your speaking of it now.

Q. When I use the words "tapping wires," you understand what I mean? A. Yes, sir.

Q. Were you ever requested by any one to tap wires? A. No, sir.

Q. Do you know Mr. James W. Osborne? A. Yes, sir.

Q. Did you ever do any work for him? A. No, sir.

Q. Did you ever do anything for him? A. No, sir.

Q. As an employee? A. No, sir, not to my knowledge. I said no, but possibly I might correct myself. Probably I may have worked for him during the years that I have been here. Of course, it is a pretty hard matter to memorize who I have worked for during that time.

Q. Did you see him during the investigation of Senator Owens? A. Not in a business way.

Q. Did you see him then? A. Oh, I met him quite often.

Q. Where did you see him? A. I couldn't state positively. I met him on the street and around town.

Q. How did you know him? A. Well, I have known him a good many years.

Q. During the investigation of Senator Owens, didn't you make certain connections to the Astor House? A. No, sir.

Q. Did you ever say that you did? A. No, sir, not that I did.

Q. Did you know of its being done? A. Well, tell us what you heard. A. Why, I heard that the Committee had been put in communication with other parties in the building.

Q. In what building? A. In the Astor House.

Q. Was the Committee sitting in the Astor House? A. No, they were stopping there. But I never made any statement that I had done it.

Q. Well, who told you that? A. Well, I don't recall who it was. We often talk over things among ourselves, just hearsay from one to another. I don't know that I can mention anybody definitely as telling that they did it.

Q. Where were you at the time that this was done? A. The time what was done?

Q. This Astor House business. A. Well, I worked up in that section. I worked there for a good many years.

Q. Did you meet Mr. Osborne during that time? A. Not personally.

Q. Well, what was it that you heard had been done? A. Why, that his wire had been tapped.

Q. Whose wire? A. Mr. Osborne's wire.

Q. By whom? A. By some detective agency.

Q. What detective agency? A. I don't know that. At the time it was mentioned, I said it was hardly possible, because that is a house where we keep a man all the time, and it is impossible for anybody to go in a place like that and do work without this party's knowing it, because it is under one man's supervision.

Q. The Hotel Astor, you mean? A. Yes, not the Astor House.

Mr. Swayze.—Mr. Moss, if you will allow me to ask a question: Can you in any way identify where you obtained the information as to the tapping at the Hotel Astor?

A. No, only that it was in a general way, talking it over with somebody.

Q. I wish you would aid Mr. Moss on that in every way that is possible. A. I will.

Q. Was the company in any way involved in that? A. No, not at all. As I understand it—I can't recall exactly how it happened, but the boys were talking among themselves and some-



body said that the Committee was over at the Astor and they had the wires tapped. They mentioned that a detective agency had tapped them, and I said at the time. "Oh, I don't think that is possible, because we have a wire chief there, and in a building like that, it is impossible for a man to go through the house. First, he has to be identified, and then there is only one man there, and he has got to have a pass."

Mr. Moss.— Tell us what an installer is.

A. He is the man who lays the wires and the instruments, the switchboards, in fact, all the outside apparatus connecting with the central office.

Q. Well, then, he knows where the wires are and all the connections. A. Yes, there is a book record in the hotel of everything, and if a man wanted to get from one room to another, he would have to come to this main room in order to make these connections, and nobody has a key except the resident man.

Q. Did you hear of any connection being made on Mr. Slade's wire? A. No, sir, the first I heard of it was your mention of it.

Mr. Swayze.— How are you identified when you go into a place? Do you wear a badge?

A. Yes, sir, the company's badge — the company's badge and the keys.

Q. And it is as much as your job is worth to lose that badge? A. Yes, sir, I have never lost it yet.

Q. And you worked in the downtown district in New York? A. Yes, sir, I worked there some years ago, then I worked up there sixteen years, and now I am back downtown.

Q. And in the course of your work, you met a great many prominent people downtown? A. Yes, sir.

Q. You are admitted right into their office? A. Yes, sir.

Q. If you found a tap on the wire of any one downtown in New York, what would be your duty in regard to it? A. Well, it would be my duty to notify the office at once.

Q. Are you ever sent out to find a tap? A. I have been.

Q. Have you ever found a tap? A. Only in the line of bogus instruments, where the subscribers themselves were putting

foreign instruments in on our wires, where we had the old system.

Q. You mean by that where we have a subscriber who makes an attachment not through the instrumentalities of the company, but through privately owned instrumentalities that he purchased?

A. Yes, sir.

Q. And among those instrumentalities is what is known as the clip machine, which by clips goes through the cord and meets the wires inside, is there not? A. Yes, sir.

Q. And it is your business to report things of that kind? A. Yes, sir.

Q. If a subscriber complained to you that his wire was being tapped by anyone, what would be your duty in regard to that? A. Well, if the subscriber reported to me, I would immediately report it to my office. I would take no action until my office was certain.

Mr. Moss.—Well, Mr. Jackson, have you any information about any wires that have been clipped by private persons? What have you heard on that?

A. Nothing positive.

Q. Of course, Mr. Jackson, don't understand that I am seeking to connect you with anything. A. No, I am trying to give you my information.

Q. You are a man that I understand has received some information. Now, it is very possible that the information that came from you was in regard to this private clipping, and I am going to run on that now. What have you heard about that? A. Well, I don't know just how to answer you on that. We hear of that so often. Somebody will complain to the office that their wire is under observation. They think so because a conversation that has taken place in their office has been repeated outside. Then we get orders to cover that line to see if we can find a tap. Sometimes it is a very easy matter to find it; other times it is almost impossible because of the way the wires are laid, and they come out in several different points.

For instance, the wire in here might also show down in the basement, and it might show on three or four floors, so that it

would be possible to make a tap on any of those floors. To a man coming in here to trace this wire, according to our records, it shows that we use a certain number on this floor. Now, we trace it from the source to the instrument and find no tap, but the tap could just as well be made from another point.

Q. Well, have you ever found any of these? A. Not foreign taps. I have found foreign instruments on the subscribers' own premises. Until very recently we had a rate known as a flat rate, an unlimited rate, and it has been the policy to change those rates whenever there was any change made in the system, and some of the subscribers, of course, didn't want to lose that rate, so rather than have any changes made on the wires they called in an outside party to do the changing. In a great many cases their apparatus wasn't standard.

Mr. Swayze.—We are confronted all the time with private manufacturers who are making instruments and methods of tapping wires and putting them in, either for the purpose that Mr. Jackson stated of retaining an old, obsolete contract, or for various other reasons. We persistently fight all of that because of our desire to maintain the absolute control of our instrumentalities. We are the one public service corporation that runs right to your desk and own everything, and we have a decision in New York State on that point. We have one in Pennsylvania, and I think one in Maryland, which upholds us in the maintenance of our instrumentalities. There have also been decisions in our favor in the West.

We have used our men who went out and were intimately related with the instrumentalities in the office to bring us any information that they had. I think you will find that probably of late years, the last year and a half or two years, the thing has rather died out. We have fought it to a standstill.

Now, that is what is meant by that. I would like to have any information entered on this record which would show that any tap has been made of any man's wire that had to do with anything except the police or the public authorities. If there has been any detective agency doing that and any of our people know it, I would be only too glad to have it produced.

Mr. Moss.— Now, in just that spirit, I am going to ask Mr. Slade to put a question to the witness.

Mr. Slade.— Mr. Jackson, do you know of some case in which James W. Osborne was interested as counsel or otherwise, and in connection with that case wires were tapped, either officially or privately?

A. I know that they were never tapped officially.

Q. Privately? A. Privately only as I stated, that I heard the wires were tapped.

Q. Didn't you on a prior occasion voluntarily state the name of the person that did the tapping in connection with the case that Osborne was interested in? A. No, sir.

Q. Do you recall doing some work for someone in New York during the pendency of the so-called Tanzer case? A. Doing some work?

Q. Doing some work in connection with your official duties as a telephone operator, and stated to that man that you knew that James W. Osborne, in connection with some investigation, tapped, or caused to be tapped, telephone wires? A. That was just before I knew you.

Q. I am not able to help you on that respect. My information, I will frankly state to you, came through my brother that you did some work for someone in the city of New York, proper, legal work, and while working there a conversation arose in respect to James W. Osborne, and in the course of that conversation you stated that you knew some cases in which Mr. Osborne was engaged and that in those cases wires were tapped. A. No, I don't think you quoted me in those words. I have only had conversations in places where we work, because naturally people ask questions, and the conversation drifts generally to topics of the times. I remember having a conversation something similar to what you are referring to, and that was in regard to your connection with the Tanzer case, and I expressed my sympathy for you and your brother and whoever was in it, and I said I had heard that Osborn had done those things previously, but I did not make the statement that I knew, because I did not know.

Q. Well, in behalf of my brother I thank you for the sympathy, but my inquiry is whether you didn't state that you knew that in

connection with some case or cases that Mr. Osborne was interested in, that wires were tapped, and you also stated the name of the person that did the tapping. A. No, sir.

Q. Are you quite certain about that? A. Positive, because had I known that I would have used the name myself.

Q. Now, you have stated that you knew of occasions or cases where tapping was done privately, so called, by some private instrument. A. No, I said I had heard it, not known of it.

Q. Did you personally know of such cases in connection with Mr. James Osborne in connection with the Astor House? A. No, sir.

Q. Can you give us the name of the gentlemen that I referred to, with whom you had the conversation prior to the time you discussed the matter about the Slades? A. Why, I think it was over in Liberty street.

Q. What is his name? A. Why, I can't recall it, but you know who it is.

Q. Well, I am sorry I do not personally. A. Well, the office does, because it was them that served me the subpoena in the Osborne case. It was No. 1 Liberty street, I think.

Q. Is he in the insurance business? A. No, I don't think so. I think he is in the private police business. That is how the conversation drifted that way. He was speaking of the tapping, and I told him that such things had been reported, but they were generally done in such a way that it was impossible almost for the company officials to get a line on the thing.

Q. Can you now search your recollection and try to recall the persons with whom you discussed the subject of Osborne's connection with the tapped wires? A. Well, this is the case you are referring to.

Q. I know, but can you recall the person with whom you discussed it prior to the time you talked with this man on Liberty street? A. Oh; you mean when I first heard it. No, it was some of our own boys. You know, when there is a number of us working in a neighborhood, we generally go to lunch in one place and the conversation drifts from one thing to another. Now, it was merely a conversation that came up and we paid no further attention to it. I couldn't give you the name.

Q. At the time of the discussion between your company's employees, you were very much interested in the so-called Tanzer case? A. Not at that time.

Q. And you were discussing Osborne's connection with it? A. Yes.

Q. Now, can't you search your memory and see if you can recall the name of the person that suggested to you Mr. Osborne's connection with the tapping of wires? A. Why, no, for this reason: The conversation that we had might have been two years previous to the Tanzer case, but it was just the coincidence of mentioning Osborne's name in the Tanzer case that brought it back, but it did not bring the name back.

Q. Now, by going backward, can't you mention some name of a person who might have told you that? A. I might mention twenty different names and might not hit the right one.

Q. I don't believe you would be of much value to guess, but I would like to have you, if you can, recall the name of some person who discussed with you the specific subject of Mr. James W. Osborne's connection with the tapping of wires, whether at the Astor House or elsewhere? A. I can't do it.

Mr. Moss.—That is all. We will excuse Mr. Jackson.

(The following letter was submitted by the Chairman for the purpose of the record.)

“ Senator George F. Thompson, Chairman Legislative Committee, New York City.

“ Dear sir:

“ The newspapers state that your Committee will allow Mayor Mitchel to testify about the tapping of the telephone wires in connection with the Charities Investigation.

“ Such investigation was instituted by the demand of the Mayor that the Governor investigate certain charges made by the Commissioner of Charities against the State Board of Charities.

“ During the hearing on such charges certain records of alleged telephone conversations taken by tapping telephone wires were offered on behalf of the City of New York.

"Objection was made by me as counsel for the State Board of Charities to the reception of such evidence.

"At that time the City was represented by William H. Hotchkiss and by two assistants in the Corporation Counsel's office, Josias Stover and Russell L. Tarbox.

"I called the attention of the Commissioner to Sections of the Penal Code, forbidding wire tapping, and claimed that the tapping of the wires under consideration was an invasion of the personal rights of the individuals whose wires were tapped, forbidden by the Constitution of the United States and by the laws of the State of New York.

"I then demanded that the three gentlemen who represented the City authorities show the Commissioner some statute, or some authority which relieved the City officials from the full penalty of the statutes forbidding wire tapping.

"In response thereto, it was stated that they were not prepared to argue such question at such time.

"The Commissioner thereupon marked the records for identification and took under consideration the question of receiving them in evidence.

"Later he rendered an opinion refusing to receive such alleged records and returned them to the counsel for the City.

"Thus, the publication of these records under the guise of privilege because taken in evidence at a judicial hearing was frustrated.

"The object of my writing to you is to request that the Mayor shall not be allowed to make these records public when testifying before your Committee and thus obtain the protection of the privilege of such occasion.

"If he wishes to make the same public, he, and those who assist him, should be held amenable to the law of the State.

"It is perhaps proper that I should avail of this occasion to call to your attention that the silence of the City authorities, when challenged before Commissioner Strong, to produce any authority for their violation of the statutes above referred to, and the failure, up to the present moment, to make public any such authority, very clearly indicates that the authorities of the City of New York violated the statutes

of this State and the constitutional rights of the citizens of Greater New York in tapping telephone wires throughout the city.

“For this there is not even the excuse of necessity.

“While the private citizen can not be spied upon as to words uttered by him over the telephone any more than his letters can be opened by the officials, yet, in either case, on presenting to a judge evidence sufficient to lead to the belief that a crime is about to be committed, an order may be made, permitting the tapping of wires or the taking of letters.

“Such orders would be granted where the true purpose was the seeking of crime, but never in behalf of a litigant seeking to obtain an undue advantage of his adversary.

“To the objection that the entry of such order would warn criminals and thereby defeat the purpose of the order, it is sufficient to say that such orders can at all times remain sealed and be opened only on the direction of the Court.

“Very truly yours,

“JOHN M. BOWERS.”

Senator Towner.—I understand it is advisable to take a recess until 2.30. The Committee stands in recess until 2.30.

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**MAY 23, 1916.**

**PUBLIC SESSION.**

(Second.)

The Committee was called to order by Senator Thompson at three o'clock.

MAYOR MITCHEL came to the stand and was sworn by Senator Thompson:

Mayor Mitchel.—Gentlemen of the Committee, during a period of almost unprecedented misrepresentation on the activities of a branch of the government, I have remained silent, awaiting



a proper opportunity and forum to make known the facts in this matter of the supervision of telephone lines. It is necessary, as mayor of the city, I should make those facts known. It has been necessary since this question was raised. It has become more necessary in view of the fact that the Kings county grand jury has seen fit to lodge this wholly unjustifiable charge against the commissioner of charities and the special assistant corporation counsel.

I, therefore, take this opportunity of stating all the facts concerning the supervision of the three telephone wires which primarily occasioned this discussion, and in order to do so, I must state to this Committee the underlying facts; and first, and as a general proposition, I wish to say to this Committee that for the last two years and a half, during the entire life of the present city administration, there has been a well organized and purposeful conspiracy, conducted by a certain number of co-religionists of my own, acting with other persons, to obstruct the due process of the government, to interfere with the proper and orderly conduct of the government, and with the proper and orderly conduct or control of the private charitable institutions of the city, and the ordering of the care which those institutions give to the twenty-two thousand dependent children committed by the city to their care.

The details and ramifications and subdivisions of that conspiracy I will discuss for you in detail. It goes back ever before the present city administration took office, or at least it had its beginnings and foundations then. It will be recollected that in 1910 and '11, the board of estimate and apportionment, in order to examine into the accounting system of the private charitable institutions of this city to which public funds are appropriated for the care of dependents committed, ordered an investigation by a subcommittee of two members, consisting of Comptroller Prendergast and myself, then sitting as president of the board of aldermen.

That committee went into this question, and in the course of its inquiry, in the examination of the accounts of certain of these institutions, there was found among the records of one of the Catholic institutions of the city a voucher bearing endorsement to the effect

that it had been drawn as part of a fund of five thousand dollars subscribed by the private Catholic charitable institutions of the city as an honorarium, euphoniously termed, for Daniel C. Potter, at that time examiner of the private charitable institutions in the department of finance, the officer upon whose unquestioned word the appropriations were recommended to the board of estimate and apportionment and were passed by that board for the private charitable institutions of the city. The comptroller secured the resignation of this man as examiner of private charitable institutions.

In the course of this investigation by the committee, it became my duty to examine the witnesses when sworn under the power and the subpoena of the commissioner of accounts. Among others, one Monsignor McMahon, a moderator of Catholic charities, was placed upon the stand, sworn and examined by me, and he admitted under oath that these funds had been collected for the purpose of creating such a fund, for the purpose of paying that fund over to Daniel C. Potter as an honorarium.

He further testified, as will be seen by the record taken in that proceeding, that having collected moneys for this purpose, after having done so, his conscience hurt him at the thought of paying them over to a public servant for services rendered in connection with his public service and his supervision of these institutions that subscribed the funds, and that for that reason he did not pay the money over to Daniel C. Potter, but appropriated the money to his own use, without asking the permission or stating anything concerning his purpose to the institutions which had subscribed.

Senator Thompson.— Who did that?

Mayor Mitchel.— Monsignor McMahon, the then moderator of Catholic charities.

Senator Foley.— Now dead.

Mayor Mitchel. —Yes, but at that time moderator of Catholic charities. If this had not been already of record I would not have mentioned it for the reason that Monsignor McMahon is now dead.

This man Potter, who had passed through various vicissitudes in life, having been at one time a Baptist minister —

Senator Thompson.—Is that a vicissitude?

Mayor Mitchel.—No, the vicissitude came afterwards, for reasons that related to certain conduct. He was separated from his congregation. Having passed through the vicissitude which I have mentioned in the department of finance, he became an officer of the ambulance board and later ——

Mr. Moss.—Who appointed him?

Mayor Mitchel.—It may have been Mayor Gaynor. It probably was Mayor Gaynor. He later became executive secretary of the Associates of Private Charities, of which William B. Farrell, of Brooklyn, is one of the directors.

Shortly after the present city administration assumed office, Potter was separated from his office in connection with the board of ambulance service. This brings us down to the time of the present city administration. When this administration took office, it had a definite program and purpose with regard to the institutions which care for the dependents committed to them by the city. That purpose was to secure humane treatment and care, proper nourishment, proper clothes, proper housing and proper recreation, particularly for the children committed to those institutions. There are twenty-two thousand.

Accordingly, Commissioner Kingsbury was selected as commissioner and Mr. Doherty was selected as deputy commissioner, and they were definitely instructed by me to conduct an examination of the condition of the private charitable institutions. From my experience as a member of the earlier investigating committee, I had fully acquainted myself with the fact that the conditions of some of these institutions were far from good.

They set about this investigation. In order that all of the three principal religious denominations of the city supporting private institutions of this kind might be represented and in order to guarantee the fairness of the examination, Commissioner Kingsbury secured my approval of the appointment of men representative of those denominations. There were appointed representing the Catholics, Brother Barnabas, representing the Jews, Dr. Bern-

stein, and representing the Protestants, Mr. Reeder. These men as a committee undertook to make an examination of these institutions.

What they found has been pretty thoroughly spread upon the record made before Commissioner Strong, the Governor's commissioner sitting under the Moreland act. In some of these institutions of all denominations, children were found with their hair knotted with lice, their scalps covered with itching sores, their bodies covered with clothes filthy, that had not been changed for three weeks, the bodies underfed and undernourished, deprived of any reasonable opportunity for recreation; compelled to sit on backless, wooden benches, some of them compelled to bathe themselves ten, fifteen, or twenty-five standing in a trough with six inches of water; many of them compelled to use the same towel after bathing, and other kindred conditions.

These conditions are not illustrative of all the private charitable institutions of the city, nor must it be understood to imply that they are. They are illustrative only of a certain number, but they were found in that certain number.

From the time that the investigation got under way down to the present time, and culminating in the indictments found this morning, there has been a persistent effort to discredit the commissioner of charities, to pull him off the investigation that he was making of these private charitable institutions, to malign him, to slander him, to lie about him at every opportunity, to intimidate the mayor in order that immunity from investigation and from censure should be secured for these private charitable institutions.

The prime movers in that effort have been men like Mr. Heberd, Father Farrell, this man Potter, this ex-minister and discredited city employee, and a certain number of other Catholic clergymen who saw fit to associate themselves with these men in this attempt.

A further attempt to attack and to discredit the administration of the department of public charities under this administration was that launched in 1914, when the State Civil Service Commission undertook an organized raid upon the city government under the guise of an investigation of the municipal civil service com-

mission, but in fact and in reality, an investigation of the department of public charities. It was an attempt to discredit the commissioner and the work of investigation and supervision that he had under way.

That attempt, lasting through a series of public hearings, charges and counter-charges, resulted in the complete vindication of the municipal civil service commission and of the work of the commissioner of charities by the civil service commission—the decent and respectable civil service commission which succeeded that one which had begun the investigation.

The next attempt of this kind was that which took place in November, 1914. When the August grand jury of 1914 made a presentment—the presentment, you will note, Mr. Chairman, was made in November of 1914—that presentment was a plagiarisation of a report rendered by the State Board of Charities in August of 1914. The presentment described conditions which had existed in August of 1914 and were then in process of correction. The mistake made by the grand jury was to accept what was handed to it *in toto* and incorporated in its presentment without trying to find out whether it related to conditions which existed at the time the presentment was made, but swallowing the report of the State Board of Charities which had been rendered at an earlier date.

It is significant as well as interesting that D. C. Potter appeared as a witness before that grand jury. Somebody misled the grand jury.

The next organized attempt occurred in 1915. The department of public charities was engaged in an effort to correct flagrantly bad conditions in the public institutions as well as in the private institutions. The worst conditions were found in the child-caring Institution for the Feeble-Minded on Randall's Island. The conditions there were so bad that they would beggar description. I saw some of them myself. I went over there after the superintendent was removed from office, and I looked at the conditions that even still prevailed because there had not been time to correct them.

When I saw infants lying on a sun-baked veranda, because there was no room to put them elsewhere, because there were in-

sufficient nurses to take them away, without even mosquito-netting to cover them, and flies crawling in and out of their mouths, the children in those institutions had been vermin-covered, and they also had been compelled to go without changes of clothing.

As a part of the reorganization of the department of charities, the commissioner brought charges against the inefficient superintendent, a Mrs. Dunphy. No sooner were those charges brought than pressure concentrated on the commissioner of charities and upon me, to withdraw the charges, to let this woman off. It wasn't the first time that similar things had occurred. An attempt had been made as far back as Mayor Lowe's administration, as an inefficient and improper city employee, and that had been frustrated by pressure.

When pressure was attempted to be exerted upon the commissioner of charities and myself failed, on the 10th of March, 1915, the State Board of Charities adopted a resolution to investigate the city department of charities. On the 22d of March, Mr. Mulry, a member of that board, with Mr. Hebberd, the secretary of the board, its executive officer, called upon the corporation counsel, Mr. Frank L. Polk, at his office and there, after some discussion, Mr. Hebberd or Mr. Mulry, I can't remember which, but it appears in the affidavit of Mr. Polk and in the record of the Strong inquiry, asked if it were not possible to find some way of adjusting this matter of charges against Mrs. Dunphy without removing her. Mr. Polk said that it was my feeling, as well as his, that a person who had been as many years in the city's service as had she, deserved whatever consideration the city officers could properly bring, and despite the fact that she had been wholly inefficient and had grossly maladministered the institution to the detriment of the children, that we would nevertheless contemplate suspending action on the charges, as it was intimated the board of education would be willing, acting upon its own motion, to retire the woman on a pension. I may say in passing that the board of education never did take that action. I think it would have been quite improper if it had.

Mr. Hebberd then said to Mr. Polk that if these charges against Mrs. Dunphy were pressed and persisted in, he feared it would

be impossible to avoid an investigation by the State Board of Charities. Mr. Polk asked Mr. Hebberd if that was intended as a threat, and Mr. Hebberd said it was not, but nevertheless he feared that if this matter was pressed, the investigation by the State board could not be helped. If a resolution had already been passed, as it had on the 10th of March, to investigate the city department of charities, how would the pressure of charges against Mrs. Dunphy or dropping them properly have any effect whatsoever upon the conduct of that investigation? And what relation had the one thing upon or to the other?

Senator Thompson.—What was Hebberd's official title?

Mayor Mitchel.—Secretary of the State Board of Charities.

Q. He wasn't a member of the board? A. No, he was its executive officer.

Q. That was in 1915? A. That was on the 22d day of March, 1915. The investigation did actually begin on the 13th of May following, the charges being pressed against Mrs. Dunphy. When Mr. Polk came over and told me what had been said to him by Mr. Hebberd, and when he further said that he believed that despite what Mr. Hebberd said to him, that it was a threat, I told him and the others that we would proceed with the charges. We did, and the woman was removed and a new superintendent was appointed of those institutions.

The State board went forward with its investigation. When that was completed, with the complete exoneration of the department of charities of the city of any charge whatsoever, it did, however, result in disclosures of such neglect and inefficiency on the part of the members of the State board that the the commissioner of charities felt it incumbent upon him to call those facts to the attention of the mayor, which he did in a report rendered on the 16th of November, 1915. It happened that I was then in the hospital, having just been operated upon for appendicitis. The report was received by the acting mayor and by him transmitted to the Governor on November 22, 1915.

There followed almost immediately the appointment of Mr. Strong by the Governor as commissioner under the Moreland act to conduct an investigation of the activities of the State board

of Charities. Beginning almost with the first days of the submission of evidence and the taking of testimony before the Governor's commission, there began what I will detail to you in a moment, an attempt to discredit the department of charities, the Governor's commissioner, all concerned with the investigation, and to exert pressure upon both the Governor himself and his commissioner, and to intimidate for the purpose of perverting justice and obstructing the due administration of the law.

On the 16th of March of this year, Mr. Hebbard having been a witness before the Governor's commission, I was called on the telephone in the evening about six o'clock by Mr. Hotchkiss, the special assistant corporation counsel retained to advise the commissioner of charities in this matter, and he told me that he wished to see me on a very important matter. I was dining downtown and told him I couldn't see him until about nine o'clock, that he might call at the place where I was dining, which he did. He told me at that time that Hebbard had testified and had, for reasons which he specified, in his judgment committed the crime of perjury. He pointed out that Hebbard, that denied familiarity with Potter, had denied frequent communication with Potter by telephone and otherwise, and had generally alleged an absence of co-operation with Potter or close association with him.

Mr. Hotchkiss pointed out at the same time what I already fully knew of my own knowledge, namely, that some person or persons had been guilty of the crime of criminal libel in the uttering of a series of pamphlets which had been scattered all over New York in the doors of Catholic churches and which bore as the name of the author that of William B. Farrell. Mr. Hotchkiss pointed out to me that he had reason to believe that those libels had been prepared and uttered not alone by William B. Farrell but by others conspiring with him to utter these criminal libels.

He further pointed out to me that from all the circumstances as developed upon the record, the conduct of the witness and from extraneous facts, some of which were also known to me, that there was a serious ground for the belief that there existed a conspiracy on the part of certain priests of the Catholic church. Potter, Hebbard and others, to pervert justice and to obstruct



the due administration of the law, in the language of the statute, in the manner which I have already indicated, and further, by attempting to teach witnesses what to say on the stand and prevent other witnesses from coming on the stand by getting them out of the jurisdiction of the commission.

And Mr. Hotchkiss then stated that he desired that these facts and the suspicion of the commission of these crimes be called to the attention of the commissioner of police in order that he might use the powers which he had for the detection of the crime.

Senator Thompson.—What was Mr. Hotchkiss' connection with this thing?

Mayor Mitchel.—Mr. Hotchkiss was retained as special assistant corporation counsel by the city of New York to advise the commissioner of charities, to operate with him and with the commissioner appointed by the Governor under the Moreland act.

Senator Thompson.—Also to appear before the commissioner in this proceeding?

Mayor Mitchel.—Before the Governor's commissioner, yes.

I think I was saying that Mr. Hotchkiss requested that that matter be brought to the attention of the police commissioner in order that he might use such means for the detection of crimes as he had at his command, and in particular the supervision of the telephone wire of Daniel C. Potter. I told him I would communicate those facts to the police commissioner, which I did immediately.

I discussed it with the police commissioner and he came to the conclusion that that means could be used here, as it was generally for the detection and prevention of crime, and that he would do what he could to obtain the evidence of the crimes which I have named.

About a week later, Commissioner Kingsbury came to me and stated that as there was reason to believe that the man Potter was to abscond the jurisdiction and as a material evidence, as I myself knew, of the commission of these crimes had been obtained already through the supervision of the telephone of

D. C. Potter, that those of Father Farrell and Dean Potter, the son of D. C. Potter, be also supervised. I told him to say what he had to say to the police commissioner, which he did.

Those wires were supervised and further evidence of the commission of these four crimes was obtained over those wires. It will be noted from what I have said that four crimes were committed, or that four crimes were charged. I wish to call to the attention of the Committee in this connection that it is made the duty of the mayor under section 15 of the charter to keep himself informed of the doings of the several departments, to be vigilant and active in causing the ordinances of the city, the laws of the State, to be executed and enforced.

Senator Thompson.—Do you do that?

Mayor Mitchel.—We try to — and generally to perform all such duties as may be prescribed by the acts of the city ordinance and the laws of the State, and that it is made the duty of the police commissioner or of the police department to enforce them at all times, day and night, and the members of such force are hereunto empowered to preserve the public peace, prevent crime, detect and arrest offenders, etc.

I wish further to point out that section 580 of the Penal Law provides that if two or more persons conspire to commit a crime, or, after skipping several sections, to commit any act injurious to the public health, to public morals or trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws, each of them is guilty of a misdemeanor.

And section 1340 of the Penal Law provides that a malicious publication by writing, printing, picture, effigy or otherwise than by mere speech, which exposes any living person or the memory of any person deceased to hatred, contempt, ridicule or obloquy, or which causes or tends to cause any person to be shunned or avoided, or which has a tendency to harm any person, corporation or association of persons in his or their business or occupation, is a libel; and section 1341 provides a person who publishes a libel is guilty of a misdemeanor. The section governing perjury is too well known to need quotation.

These were the four crimes which it was suspected had been committed by these persons, either individually or acting in con-

cert: perjury, criminal libel, conspiracy to utter a criminal libel, and conspiracy to prevent and obstruct justice and prevent the due administration of the laws.

I might point out the libelous pamphlets were circulated, from the best information we are able to obtain, at the rate of about 160,000 of each publication and were circulated at the doors of practically all the Catholic churches of the city.

Senator Thompson.— By telephone?

Mayor Mitchel.— No, by hand, were distributed.

Now, gentlemen of the Committee, I stated that there was a conspiracy, in my opinion, on the part of certain clergymen and laymen to obstruct the due administration of the laws, to interfere with government: in short, religious interference with the government of this city, which is a thing I think contrary to the general use of American institutions, because if there is one thing that is a fundamental of ours in American life, it is that just as we declare that government shall not lay its hand upon the altar of the church, so the church shall not lay its hand upon the altar of government; and let me say that while I am mayor, it will not.

As to the specific crime, or the four crimes, the evidence obtained through the supervision of these three telephone wires was as follows: I give you the conversations —

Mr. Moss.— Mr. Chairman, I think it is proper to object to a statement by the mayor of the conversations that were taken down, for the reason that was given in the letter which you received and made part of your record this morning, from Mr. Bowers — for that reason among others.

Senator Thompson.— Mr. Bowers sent this letter this morning (handing it to the mayor): The mayor tells me he has seen a copy of it.

Mr. Mitchel.— I am familiar with it.

Senator Thompson.— He sent it by his son, I think it was, Mr. Bowers, Jr. I at that time told him that at the time the mayor came before the Committee, Mr. Bowers might be present.

Mr. Moss.— I understand he is out of town.

Mayor Mitchel.— Mr. Chairman, I insist on proceeding with this statement of the facts as they are. These are facts and they contain the evidence of the commission of serious crimes. To my mind, it is one of the most serious crimes that can be committed in American jurisdiction, that of an attempt on the part of a particular group, of a particular religious denomination to exercise a preponderating influence in a particular branch of government and to interfere with its proper administration.

Senator Thompson.— Can you hold that for a little bit?

Mayor Mitchel.— Not for a minute.

Mr. Moss.— You didn't hear these conversations, did you?

Mayor Mitchel.— Of course not. I think I can make a statement that will straighten this up. This is an investigation of the supervision of telephone lines. The police supervised these three telephone lines. What I have here is a complete justification of the supervision of these three telephone lines by the police, showing the actual commission of crime. I can well understand that Mr. Bowers, who is representing these gentlemen, would not like it known here that Mr. Farrell promised to pay fifty dollars to get a witness out of the jurisdiction, and that Monsignor Dunn promised to pay one hundred dollars —

Senator Thompson.— Just a minute. We are not going to take these facts, one way or the other, until this Committee decides to take them or not. We are consulting about it, and we have got others besides me on here. It is my idea to let you go ahead.

Mayor Mitchel.— I appreciate that.

Senator Thompson.— But I want to talk to members of the Committee about it. We will just suspend for a minute.

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Senator Thompson.— The last reference to the conversations over the telephone you will strike from the records. The Com-

mittee are somewhat divided over this matter, but we have, as has been already referred to, an opinion by Mr. Bowers. The other parties whose conversations are evidently contained in this matter are represented by an attorney who is here and whom I understand objects to this testimony being taken.

Mr. Tully.—May I have that opinion that I just handed to Mr. Moss?

Senator Thompson.—I won't allow you to go into this conversation.

Mr. Tully.—I don't intend to go into the conversation. I understand that this is an invitation to state my position. These alleged conversations, taken down in longhand on a slate by four police officers, were presented to Commissioner Strong in the course of his investigation and he refused to allow them to go on the record, and after having held them under advisement for a period of I think two weeks, he rendered an opinion in which he held that it would be improper, as he thought, to receive those exhibits, the alleged conversations, and there is just this portion of his opinion which I think is pertinent to this investigation.

Mayor Mitchel.—He said, while the grand jury had it under advisement.

Mr. Tully.—I will read exactly what he said: "I am further led to this belief, to this conclusion"—that is, to reject the proposed exhibits—"by the conviction that the primary use, if any, to be made of these memoranda should be at the hands of the district attorney and the grand jury, to see if a crime or crimes against the penal laws of the State have been committed, as has been charged before me by counsel on both sides. Incidentally, some of this memoranda have some bearing upon the issues referred to me. To make public, however, any of these conversations in a use that is merely incidental and in advance of such use as may become the subject of grave public concern would be an abuse of my discretion, if, indeed, I have any in this matter, and subversive of the rights of both the people and the accused."

Now, if the Governor's commissioner, after mature deliberation, arrived at the conclusion that these conversations should not be placed upon the record, it would seem to me that it applies with greater force to the action of this Commission in determining whether or not these alleged conversations should be received. The grand jury of Kings county has to-day determined that in its judgment a crime has been committed in tapping telephone wires and taking down these proposed exhibits claimed to be reports of conversations. Now, if it is a crime to tap the telephone wires to take these messages, it is an aggravation of the offense to make public what has been the result of using the telephone wires; and merely for the purpose of stating the position of three persons whose telephone wires have been tapped, I submit that the mayor should not be permitted to put upon the record conversations which in many cases never took place, conversations which if they did take place were improperly and inaccurately reported, and it seems to me that the mayor, in making this attempt to spread upon the record of the proceedings of this Committee these alleged conversations, is defying the law indicated by the action of the grand jury to-day, and he should not be permitted so to do.

Mayor Mitchel.—The commissioner's decision or opinion was not read to you in full.

Mr. Tully.—I will read it in full..

Mayor Mitchel.—He said, in part, that "there are approximately one hundred of these conversations, and they tend to indicate the existence of conversations between persons, some of whom apparently, if the conversations were correctly reported, were persons who have been witnesses and some of whom were not. They seem to show an attempt to attack and discredit the Commission itself, to attack and discredit Mr. Hotchkiss' clients, to spirit persons desired as witnesses away from the jurisdiction of the courts and the Commission, and, finally, to advise witnesses what to say and what not to say when on the stand. Much of this is extremely serious and may well be later transmitted to the grand jury, and is, of course, always held at their disposal."

Mr. Moss.—Were these conversations which you were about to give to the Committee, were they stated in words or in substance to the grand jury of Kings county?

Mayor Mitchel.—Yes, I believe they were.

Q. So that the grand jury in Kings county had the whole matter before them? A. Yes, but you will recollect that these persons charged with crime were brought before that grand jury and for some reason were not asked to execute waivers of immunity and that, therefore, that grand jury, having called them witnesses, couldn't have found indictments against them on this offense.

Q. Have they found a presentment against them? A. I don't know what they have done.

Senator Thompson.—Well, is there anybody else who wants to be heard about this?

Mayor Mitchel.—I, Mr. Chairman, insist upon the opportunity——

Mr. Moss.—Pardon me, are those conversations that you have referred to the subject-matter of the opinion which Commissioner Strong expressed?

Mayor Mitchel.—In part.

Q. You mean there are more of them? A. I do.

Senator Thompson.—Now, this Committee determined in the first place, not particularly as a committee or as persons who are unfortunately members of the Committee, we are not stuck on the idea of investigating this wire-tapping proposition at all——

Mayor Mitchel.—I know, but you are doing it.

Senator Thompson.—I know, but now we have a list containing three hundred fifty cases wherein wires were tapped within the last seventeen months, on the request of the police commissioner, by the telephone company. Now, should we go into a trial in the public in relation to those three hundred fifty taps, somebody would have to extend our time until July 1, 1917, and, besides that, some of us would probably go crazy before that time arrived.

Now, there are a good many reasons that we have all agreed upon that a good many of those three hundred fifty names on that list should not be made public. Everybody agrees to that, because it would in a great many cases result in a whole lot of injury to people that are absolutely innocent of any crime, of any intent to crime or any intent to commit crime sometime in the future. Now, if this conversation is taken, it necessitates the other fellow coming before this Committee and think of everything that he can think of if he doesn't like you——

Mayor Mitchel.—I have no objection to that.

Senator Thompson.—If this is put on the record, each one of them would have to be given a chance, and the Committee don't look forward to that with any great amount of pleasure. We have taken these conversations in executive session, what we have taken—that is, the testimony.

Now, there is an objection being made by these attorneys and the reason for the objection is, they say it is a slander, and that if we permit it on our record it makes a justification, we privilege it, and, therefore, they will charge us instead of someone else with originating the slander, if there is slander.

Another thing, they say these conversations were taken by a man who didn't know who the parties were on the lines talking.

Mayor Mitchel.—You don't know that and they don't know that yet.

Senator Thompson.—No, I don't understand it, but that is what they say.

Mayor Mitchel.—And I deny it.

Senator Thompson.—Why, it would take the Committee weeks on this thing alone, and we don't want to try these cases or any of them. We have in mind, Mr. Mayor, that if you want to we will take this conversation over the wire, but we will take them in executive session. We will go into executive session now and take them, if you like, or you can make the rest of the statement you desire and we will go into executive session afterwards, whenever you like.



Mayor Mitchel.—May I say a word? Senator, these are facts to which the public of this city is entitled. I have been accorded the privilege of coming here. I was asked in the first instance. I have desired, since then, to make a full and complete statement of this case, and I have here in my hand the evidence which justifies the police action in these specific cases, and I demand the opportunity to state it here in public, in the regular course and due process of this Committee's hearing, and I believe that there is no status for an executive session. I am not willing to state it in executive session. I am willing to state it here.

Now, I understand all the attorneys have good reason to want to suppress the truth in this matter. I can understand why Mr. Tully's clients fear to have this come out upon your record, Mr. Chairman. And I can understand more than that, as to the reasons that underlie the desire that these facts should not be made known to the people of this city in this forum, here at this table.

Senator Foley.—Why not lay it before the proper criminal authorities?

Mayor Mitchel.—Senator, that in due course will be done.

Senator Foley.—Why not now?

Mayor Mitchel.—We are choosing our time on that.

Mr. Tully.—May I reply to a statement made by the mayor?

Mr. Feinberg.—I shall object to that.

Senator Thompson.—We don't want to go into this thing further, Mr. Tully. I have been here most of the year on this investigation and three months on another, and never yet have I called for help. But I must say that the idea of more days at the present salary of a State Senator in an investigation does not appeal to me nor other members of this Committee. We get nothing a day, and really it doesn't accumulate wealth, and we don't want to add anything further to our burden that we can help.

Now, we are not going to try these cases, either this one or the three hundred fifty other ones that are included in that list, only in the most perfunctory way and in executive session. The Committee have decided to take that in that way and we will take this in the same way.

Mayor Mitchel.—Well, I protest against that Mr. Chairman, and for this reason: I think it is most improper that this Committee, with its counsel, who at the same time that he is counsel to this Committee is counsel to the Association of Private Charities——

Mr. Moss.—That is untrue and the mayor knows it.

Senator Thompson.—That may be struck from the record.

Mr. Mayor, Mr. Moss is not counsel to this Committee in relation to the course we have taken. The Committee have arrived at their own judgment, and we have not proceeded on the advice of Mr. Moss. The Committee, I think, would have decided not to have taken it, but it was Mr. Moss' suggestion that it be taken in executive session. I think that is what there was to it.

Mr. Moss.—There was just that much.

Mayor Mitchel.—An executive session means a suppression of the facts.

Mr. Moss.—No, it doesn't.

Senator Thompson.—Not as we see it.

Mr. Moss.—Some of the things that have been taken in executive session have proven to be extremely important. We didn't open this Farrell case, and I particularly didn't.

Mayor Mitchel.—I understand that.

Senator Thompson.—And Mr. Moss is not entitled to any criticism.

Mr. Moss.—Oh, the mayor can criticise all he likes, but it takes two, you know.

Senator Thompson.—Well, we are not going to try that case, either.

Mr. McQuiston.—Mr. Chairman, I think it might be of interest to the Committee to know just how these conversations were taken. It has been said that they were taken in such a manner as not to be perfectly recorded. How were they taken?

Mayor Mitchel.—That will be developed when these matters are presented at the proper criminal jurisdiction, as they will be in a very, very short time.

Mr. Tully — I can answer the Assemblyman's question by the testimony given by the police officers.

Mayor Mitchel.—Before the grand jury?

Mr. Tully.—Before the Strong Committee.

Senator Thompson.—We are not going into that Mr. Tully.

Mr. Tully.—Well, the question was asked.

Senator Thompson.—Yes, I know, but if the Assemblyman wants to know, I will tell him, because I know.

Mayor Mitchel.—I want to go right on here.

Senator Thompson.—Well, we are not going to do that. We are going into executive session in this room.

Mayor Mitchel (to the reporters).—I formally invite you, as chairman of the sinking fund, to remain.

Mr. Moss.—I move you that this Committee, having made its decision, immediately retire to the adjoining room and go about its business.

Mayor Mitchel.—I don't want to inconvenience the Committee or be discourteous, even if the Committee is discourteous to me —

Mr. Moss.—They don't mean to be discourteous.

Mayor Mitchel.—I simply want to make perfectly evident and plain that the Committee has got to leave me here, because otherwise I am here and remain here for the purpose of telling the facts in this matter.

Senator Thompson.—We want to hear them, Mr. Mayor, but in executive session, and if you won't give us the room in this building, if you exercise your authority that way, we will adjourn and find a room somewhere else just as quick as we can.

Mayor Mitchel.—You have had the room and you are welcome to it.

Mr. Moss.—We haven't the power to enforce our demands, Mr. Chairman.

Mayor Mitchel.—If you want to take the position that you don't propose to permit a statement of these facts on this record and invite me to withdraw, why, I will do so.

Senator Thompson.—We don't invite you to withdraw, but we do invite everybody else to.

Mr. Feinberg.—Mr. Mayor, there is a higher question involved than your desires in this matter. We as a Committee are responsible. We don't say that the statement——

Senator Thompson.—Never mind that. There isn't any doubt about it. It has been settled that the Committee is not going to hear this in open session, and we will hear it in executive session if you want to present it. That is the judgment of the Committee, and that is final.

Mayor Mitchel.—Well, I also will have to take under advisement whether I will give it in executive session.

Senator Thompson.—That is all right. We will have a recess for a few minutes.

Mayor Mitchel.—All right if that is the way you want to proceed, I will give it to you to-morrow.

Senator Thompson.—All right. We will talk it over and maybe then we will feel differently about it. That is the way I wanted to do, but my suggestion was turned down. The witness will be excused until to-morrow at eleven-thirty.

Mayor Mitchel.—Make it twelve, will you? I want to get through a meeting in the morning.

Adjourned into executive session.

MAY 23, 1916.

EXECUTIVE SESSION.

(Second.)

Called to order at 5 P. M. by Senator Thompson.

MR. LORD was called to the stand and sworn:

Mr. Moss.—What is your full name, Mr. Lord?

Mr. Lord.—Frank A. Lord, deputy police commissioner.

Q. Mr. Lord, have you any knowledge or supervision of the police listening-in on telephones? A. In some instances. The men who listen-in on telephones are members of the detective bureau and I have supervision of the detective bureau.

Q. Is there any man in the detective bureau who has special charge of that function? A. George Yunge.

Q. And who gives Mr. Yunge orders? A. Before Yunge can put the wire on, he gets approval from the police commissioner.

Q. What function does Captain Deevy have? A. With respect to this particular thing?

Q. Yes. A. None. He is acting captain in charge of the detectives of the first branch, and the place where the telephone men sit is within that branch.

Q. How many men do you have who attend to listening-in? A. Four and Yunge.

Q. Are they specially trained for it? A. Yes, been at it for a long time.

Q. Are they patrolmen? A. Yes.

Q. And when they listen-in, how do they report hearings? A. I have never seen them do it.

Q. Do you know the custom? A. They are told when they listen-in, the person whom we want to get. If that person comes in on the wire, the listener-in, I believe, writes down in longhand as he listens.

Q. On paper or on a slate? A. That I don't know, sir. He writes down as he listens the subject-matter which relates or might relate to a crime. If it is gossip about the weather, I am told

that it goes in one ear and out the other. If it is something that could not relate to the subject, it is not kept.

Q. Then a police observer has a line beforehand as to what may come on the line and he is looking out for that? A. That could be answered yes or no. For instance, we cover a hang-out. That is not for a given person or the detection of a given crime, but that is to get known thieves who are believed to use those wires to arrange their tricks at night, and they know whatever comes in along criminal lines.

Q. But it is purely a detective function as you work it, and it is managed according to the necessities of the particular case, I should judge? A. That question doesn't mean anything to me, Mr. Moss. I wouldn't feel safe in answering it.

Q. You don't have a fixed rule, but each case is handled according to its own needs? A. Well; there again I couldn't say yes or no.

Q. Who determines whether every conversation that comes in on the wire or whether portions of it should be taken? A. The man who is listening.

Q. He then must have some instructions. A. The general instructions, yes; where it is to locate a man, and many of them are, where we have all the evidence of the crime and the commission of the crime, but we haven't got the criminal, he knows that what we are looking for is the whereabouts of a man, and remarks which might give some light upon that question are recorded and reported.

Q. How does a case get into that bureau or squad where the listening is done? A. There I can only speak for myself. If a case comes to my attention which I think can be legitimately solved in this way, I get hold of Yunge and say, "Yunge, I want you to cover these wires," whereupon Yunge goes downstairs and makes out the application and it goes to the police commissioner, but the police commissioner will be notified by Yunge that it is upon my request and I have got to make good. That is, I have got to show some likelihood of the commission of crime.

Q. Have all the police officers gotten away? A. Yes. I am sure that is not my understanding that you wanted them. I understood Mr. Thompson to say that to-day's program was changed in such a way that he would not need them.

Senator Thompson.—It is perfectly all right. I don't want you to feel that Mr. Hardy or Mr. Lord tried to take any advantage, because I am sure they did not. They knew what the mayor had to say and they suspected it to take all the rest of the day. That is all there was to that.

Mr. Moss.—Now, in each of these cases where listening-in occurs, you treat that as a case in the department for statistical purposes.

A. No, sir, sometimes not.

Q. Well, I understood some record is kept. A. Mind you, I am only speaking for myself. I am not much of a "card" fellow. I know there are lots of cards used in the administration, but I don't keep them. I will tell you how I do it.

Q. But isn't there a system in the department by which every case is given a folder and all the reports and everything relating to it go into that folder? A. Under some conditions, yes. If a complainant goes to a branch and say, "I had my watch stolen," the person in that branch is required to report on a form which is called an EB4, and the result on what is called an EB5. That is by members of the department proper and not by the civilian heads.

Q. Don't you think that the other commissioners generally put their cases into statistical systems? A. Well, the first deputy, I don't know what he does. I occasionally handle these cases, and I never do. The third, I don't know. The fourth is the statistical man, and consequently never has any cases. The fifth, I think, follows the same line I do.

Q. Now, let's take a case where you do not make a statistical record. Isn't some record retained by which it can be traced in future time? A. It depends on how far I get. I can only speak for myself.

Q. Well, do you consider all cases where there is listening-in on the wire sufficiently important to make a record of the case and keep it for future reference? A. There is a record of the listening-in until we get to a point where some police action may or does follow.

Q. Did you have anything to do with this Farrell case? A.

Nothing whatsoever. I think I read of it in the papers like the ordinary citizens.

Q. Did you have anything to do with the Seymour case? A. Everything to do with it, practically.

Q. Did you make that a regular case, so to speak, in the office, in the statistical file for the department? A. I never keep a file. I never have kept any, and I didn't in this case.

Q. Is there any record of the Seymour case which will show the daily steps that were taken? Wasn't there any record kept of this Seymour case which would show the various steps taken from time to time? A. No, sir. I can tell you everything you want to know about it.

Q. Yes. Well, who was the first one who made any request or communicated any information which led to your taking charge of the Seymour case? A. The police commissioner asked me on the 30th day of March.

Q. That is Mr. Woods? A. Yes, sir.

Q. Was anyone with him? A. No. He said to come with him: "Take lunch with me."

Q. Did you meet anybody? A. Yes, I met Julius Morgan — young Morgan — and a man named Egan, who was familiar with what he claimed to be an attempt to steal cable information from the Morgan people.

Q. That was the very beginning? A. That was the start.

Q. And have you any objection to telling the nature of the communication that he made? A. He stated that stuff was being stolen there, and the police commissioner told me to get down there and look at the evidence.

Q. And that was the general nature of the charge that he made? A. General and specific.

Q. Was there any record of that charge made or kept? A. No. That is, I didn't keep any and I can't conceive of how anybody else could have kept any.

Q. There isn't a record of any kind of this case in any book or any paper of which any record was kept? A. Only a book that certain wires were covered and the person upon whose request it was.



Q. Did anyone sign or swear to any information charging crime? A. No, sir. If so, we would have had a warrant issued.

Q. No warrant was issued? A. No.

Q. There was no warrant against any individual or to search any premises? A. No, sir.

Q. Did you know that any premises were searched? A. I did not until Judge Swann called me up many days afterwards and told me that premises had been searched there, he believed, and as he very frankly confessed when I saw him, he said he was under a temporary misapprehension. He thought that the detective bureau had searched the place or caused it to be searched, or had searched it in connection with other agencies.

Q. Did you come in contact with Mr. Burns? A. Yes, I met Burns several times.

Q. In connection with this case? A. Yes.

Q. Did Mr. Burns consult with you as to what he was going to do? A. He came twice to see me, and I will tell you why I turned him off. I wanted to get the information from Burns when I was told that he had been getting information, as I would get it from any citizen, be he detective, private or otherwise; but the most cursory examination into the Morgan offices showed me that there were two purposes, and we have got to keep them distinct: One, the commission of a crime, which it is our business to get after if we could, and the other purpose might be for all that I might know, you see, what you might call a commercial rivalry, which is not only none of my business to do, but is strictly my business to keep away from.

Now, you can readily see that Mr. Burns might serve me generally. He might have other information, while the police department could only be acting upon what was stated to be a crime. Whereupon, I told Burns that I now knew the names of the people who might give us information upon this subject, that I couldn't learn anything more from him, and that inasmuch as it was not my business to give anything to him — we had agents of our own — I asked him not to come again. That is the last time I saw Burns until the day that Judge Swann picked the matter up and asked me to come down and see him. Now, it seems that he had sent for Burns and that Burns had said that he was acting in

collaboration with the detective bureau — that is to say, myself — and Swann asked me how about it, and I stated, or should have stated, and I think I did, substantially and exactly what I have just told you.

Q. That is, that you had not co-operated with Burns? A. Yes; and I will tell you what raised the rumpus before Judge Swann. There was some evidence before Judge Swann which led to believe that someone had broken into the offices of Seymour & Seymour and taken some stuff. Now, whether they did or didn't, I have no knowledge, never did have and haven't yet, and since then have not added to my sum of knowledge on that question.

Senator Foley.— It wasn't anybody in your department? You verified the fact that it wasn't in your department?

A. Oh, I know that. We are not burglars. We are all kinds of things, but we are not that — at least with my knowledge we are not.

Mr. Moss.— Did you have any detective detailed to investigate the complaint that Mr. Morgan had made?

A. No, sir, I didn't, and I would like to tell you why if you will let me.

Senator Thompson.— Mr. Lord, can't you get some of those men here? I want to get at that. I want to do it to-night.

Mr. Lord.— Well, they are all scattered now.

Senator Thompson.— Well, get those that are nearest.

A. There aren't any that are nearest.

Senator Thompson.— Well, get those that are farthest away. I think we had better have them now.

Mr. Moss.— Let me run this down and we will save the list until Mr. Woods comes.

Senator Thompson.— There are some things I know about this list and some things I don't. I have got some engagements of my own and I want to keep them.

Mr. Moss.— What time can you get someone here?

Mr. Lord.— Well, I don't know.

Senator Thompson.— Just go out and see who you can get.

Mr. Moss.— We will sit in the evening if it is necessary, because I want to finish this story to-night.

Mr. Lord left the room for a few minutes.

Mr. Moss.— Now, had you any detectives detailed on this case by anybody?

Mr. Lord.— No.

Q. Well, didn't it seem to you, Mr. Lord, that if this was important enough to allow a wire to be cut into, that there should have been a record of it and the place that was looked into should have been supervised? A. I suppose I never keep a record unless there is an investigation.

Q. I don't mean this to be critical? A. Oh, to get information, certainly.

Q. Now, didn't you consider this a case where you would supervise a wire, that your men would be getting the confidential communications and everything else that went over that wire, was important enough to keep careful record of it? A. I never kept a record of the case.

Q. Didn't you think that if it was important enough to cut in on the telephone, that there should have been assigned to the case? A. I thought he could do the work as well as I could.

Q. Well, you were simply working the 'phone? A. From the nature of the case, Mr. Moss, that was all that could be done. Here was a letter — here was a cable file, one the night of March third, one March fourth; the letter and the information which Mr. Egan told me he suspected, and the signature, "O. B. Phillips," over a letter which I learned later was written by De Witt; and that somebody in 120 Broadway had grabbed the contents of that cable. That was, if there was ever in the world, a job for the telephone.

Q. You never put these telephone operators into court, do you? A. No.

Q. You keep them covered and you take the information that they get in order to work it out through your other channels. A.

If I had gotten any information worth anything, that would have gone to the detective and started the record of the case.

Q. Couldn't you have gone into the Seymour office and seen whether they were connected with anybody that belong to the Morgan office? A. No. There was a number of people who had offices there, and you can't put a detective in an office with six or eight desks and have him ramming around there.

Q. We are informed that detectives belonging to the Burns agency did trace some of these men belonging to the Seymour office from the Morgan office. Couldn't you have done the same thing? A. I didn't. Did they get any results from it?

Q. Well, they got the cablegram out of Seymour's office. They say they did. A. Did they get a man in court? You see, there is a difference between private detectives and us. We have got to discover the crime and try to punish somebody for the commission of the crime, or prevent the recurrence of the crime. They can can information for such purposes as their employers want to use them for.

Q. Now, having discovered that Mr. Burns invaded the Seymour office, at least, having been informed of it from Judge Swann's statement, what steps if any were taken to hold Mr. Burns to come? A. As far as I know?

Q. Yes. A. None. Mr. Swann told me, "I have got the evidence if Mr. Seymour will proceed," and in my presence he called up Mr. Seymour on the telephone. I can only tell you what I heard Judge Swann say: "Will you make a complaint? If you do not make a complaint, I don't see how I can proceed." He hung up the telephone and said that Mr. Seymour would not make a complaint.

Q. Do you know whether or not Mr. Burns has been interested in other cases where wire-taps have been made? A. As far as I know, he never got anything off the telephone. He wasn't listening-in on this. I read somewhere where he was: He wasn't. If he was listening-in on it and I permitted it, why, I would try to resign before I got fired. I don't know whether I would get my resignation in quick enough or not. He wasn't allowed to listen-in.

Q. Did he get any information as to the conversations that were heard? A. He did not. It was none of his business. I

got information from Burns as to whose wires were tapped. I said, "Give me the names of some of these fellows you have been trailing around. I will take the action." And I said, "What is the use of your doing anything more with this? You are paid for your time and you don't want to waste it coming around here." He never came back again. I will work with anybody, you know, the bootblack or the head of a detective agency, if he is got anything, but I am not giving anything to either of them. It is not my object. Frequently there is a misuse, but I have no control over the thing, but if I have it coming in all the time, I will take it as fast as I can get it from any source whatsoever.

Had we gotten far enough to start something, you would find that case, like all others, in EB4 and EB5. It would have been initiated by the arresting officer whom I would have asked to go out and pick the man up, but we didn't get that far. I think we run two days, as our record will show, and much of the stuff that came in was obviously of no use. The rest of it was of so little use that you couldn't follow it up, and I examined it and destroyed it, and finally I said, "Here, the suspected people are not coming in on the wire." They didn't.

Q. Did you know anything about the listening-in in the case of a firm at 42 Broadway, December 28 — Hayes & Kerngood? A. I don't know anything about that, sir. I will tell you in just a minute who does. Let me look at your list. Oh, that was way back in 1915. Were they lawyers?

Q. Yes. Now, have you a squad something like the old "vice" squad? A. Well, I am running a detective bureau alone. I ought to know about all the various organizations, but I don't.

Q. Well, do you know whether police officers engaged in work in gambling houses, disorderly houses, poolrooms, etc., cut into wires where they don't have to go through the telephone company? A. That I don't know. I have heard for years that they have ways for getting in on a wire, but I don't know and it wouldn't be fair to whoever is running that to say so.

Q. Who is the third deputy? A. Mr. Dunham.

Q. And Lieutenant Costigan is in charge of this squad? A. Yes, he is the central office man. If you ask me whether this was practiced in the last two or three or four years, I don't know.

Senator Thompson.— Who is the head of the detective bureau?

A. I am.

Q. Then you say the deputy of Manhattan would have charge of that? A. He would have charge of the gambling houses and disorderly houses and poolrooms in Manhattan. I may say, to make my position clear, that poolrooms and disorderly houses are not those things included in the jurisdiction of those people.

Q. Hayes & Kerngood — “To locate a fugitive.” A. Well, I will take it upon myself to answer that, because I know about it. I want to make this clear to you. If a fugitive is wanted under indictment or otherwise, if you have got enough to know that we want him, one of the ways that we will try to get him is to cover somebody that we think he is likely to call up. For instance, in the case of Rofrano, we covered his law partner. This Kerngood was covered, thinking he was one of the persons to call up. And while we are on the subject, I could clean up 50 Church street with just a word. We thought he might call up there, and that one I know, because I was running it myself.

Q. Wakelee, Thornall & Wright — “To locate Frank Thompson.” A. That and Kerngood are all I know about. That was to find out if he called up from where he was. Now, I can say to you truthfully, if Frank Thompson called up his lawyer when we had the wire covered, when we tried to locate him, and said to his lawyer, “I am guilty of the crime, I did kill the man,” that stuff would not be used. There isn’t a chance in the world that it would be used. The men know that we are not looking for that information on those cases. Their job is to locate the man.

Q. And still, you might get just that statement. Was Kerngood attorney for a fugitive? A. I would have to testify second-hand on that, but I think he was.

Mr. Schuster.— You don’t believe that even a criminal has a right to secret conference with his lawyer?

A. Oh, yes, we do.

Mr. Schuster.— But you take it away from him.

Mr. Moss.— You find out his secrets?

A. No, we find out where he is. It is one thing to locate a man legally and ethically, in my opinion, to find out where the man is,

but to get the contents of his mind as expressed by his communications to his lawyer is not my business or anybody's else's.

Mr. Moss.—That throws light upon the question that was raised by the mayor a few minutes ago. He said the police supervised wires at times, therefore this was a proper subject for the Committee to investigate. Now, I hadn't thought of it just that way. I thought of the telephone company as supervising wires, but it would be that the police are supervising wires. If that would be the idea, the mayor, who is head of the police force, has a supervising function here. That opens a question, taking Mr. Lord's testimony just given, whether it was the proper thing for the police department to supervise the telephone wires to the extent of listening-in on conversations between criminals and their counsel.

A. I am willing to say that I am somewhat disturbed on it, but I feel certain as to this, that the only purpose of our going in is to locate the principal, and the only information that will be used in consequence of that listening is the location of the principal.

Now, I will illustrate for just a second. I am not trying to prove the thing at all. Fifty Church street is a good example. Frank Thompson was wanted for stealing fifty thousand dollars. We couldn't get him. Now, we got on the wire that he would be in town. I took what you might call a bookmaking parlor and sent some boys down there, but at the same time sent some to Atlantic city in consequence of that one telephone conversation. The detectives going out to Atlantic city met the detectives coming from Atlantic city with the fugitive.

Now a thief, of course, can be picked up on the way to his lawyer's office just the same as he can on the way to the drug store.

Mr. Moss.—Now, Mr. Lord, I am not a policeman. I have not claimed to have the idea that the police department has not a rightful duty to get its criminals by any methods they can. They must get the man; they must bring him to trial. I have no objection to extreme detective methods to get the man. Let him have his trial rightly; but it seems to me that you are

getting the function of the police department, which is to get the man, mixed up with the telephone company, which is to give us secret, private conversation.

Mr. Swayze.— What do you feel as to the proposition of your listening-in to all conversations, incoming and outgoing? Is that necessary for the carrying on of your work?

Mr. Lord.— If the telephone hadn't been invented, there would still have been police, but to say the least, it would detract a great advantage from us if you took that away.

Senator Thompson.— Do you ever use the telegraph?

Mr. Lord.— No, we can't get anything out of the telegraph. Perhaps some of them do, but there isn't much chance of your getting anything on the telegraph. Now and then we do.

Mr. Swayze.— Why can't you get a telegram from the telegraph company under that 1901 statute?

A. Well, we can, but the chance of getting anything is so small that it wouldn't pay. The telephone pays good dividends. These three hundred fifty wires paid good police results in dividends. If we had had three hundred fifty Western Unions, we wouldn't have gotten so much. If everybody had a telegraph instrument in his house, then it would be something like this.

Q. I am confronted with the proposition, Mr. Lord, as to how to work this out and protect the public fully, and yet not withdraw from the police department that which I fully maintain is so necessary to the conviction of crime. A. Well, everybody in this room wants that.

Q. Have you tried to study out any method by which you could obtain what you wanted and not at the same time listen to all conversations, incoming and outgoing? A. Not unless you fix up a system of colors, where if a fellow is going to use criminal language, it will light up a little light.

Q. Well, we can't do that. A. Or when you can transform moral contempt into physical.

Q. Have you ever thought of specially constituted officers whose relation to the situation would be held confidential, so that nothing would be divulged except the particular thing that has inter-



ested you so much in getting the criminal and not get his confession to his lawyer? A. That suggestion is new to me.

Senator Thompson.—(Reading proposed section of Penal Code.) What do you think of that?

A. I am not expressing the opinion of the department, only my own, but I think the fellow who wrote that knew what he was talking about.

Mr. Swayze.—Isn't that the same law that holds in other States as to telegraph information.

A. I don't know about that. Somebody told me that in New England there was some such safeguarding as the kind Senator Thompson just read.

Mr. Feinberg.—That law, just with a casual reading, doesn't add anything to this situation. A. Well, it does a very valuable thing in my judgment. A man who is worthy to be police commissioner is worthy to have confidence reposed in him, but sometimes a man would prefer to have a person other than himself pass upon his power to do a certain thing. I would be one of that number.

Mr. Moss.—The commissioner means that, being a policeman, he would rather have that function exercised by a judge.

Mr. Swayze.—The difficulty of the provision in the statute such as the senator has just read is that it doesn't provide any protection against that thing which disturbs telephone companies so much — that you have to listen to all conversations.

Mr. Lord.—You want the services, Mr. Swayze, not of a lawyer but of an inventor.

Mr. Swayze.—No, we want the services of some specially detailed person who will only do a specific class of work.

Mr. Schuster.—I think a lawyer ought to be protected.

Mr. Swayze.—Then all will want to be protected.

Mr. Lord.—We know, as Mr. Moss knows, that in the Becker case, telephone slips were used to get certain valuable information.

Mr. Moss.— Those were to corroborate statements of certain people.

Mr. Lord.— But there a lawyer was telephoning, this is my recollection, to a certain person who was a fugitive at the time. That lawyer had a duty to go to the police and say, "I know where a fugitive is." There is no question about that. He didn't do it. Now, I don't believe that either one of those people could be heard to say that the privilege of an attorney or client was invaded.

Senator Thompson.— To find out the fact that a certain man is attorney for a certain client is permissible, and that he goes to his office is permissible.

Mr. Lord.— And what the attorney says to the client is permissible.

Senator Thompson.— I don't agree with you there.

Mr. Schuster.— As an attorney for a confidential pronouncement?

Mr. Lord.— That is a law of the land, anyway.

Mr. Moss.— Don't you think that when a case is important enough to listen-in on the wire, there ought to be a record made of that case?

Mr. Lord.— It is recorded. You have got it recorded there. The telephone company has it and I have got it, and had there been any action to follow up, it would have been EB4, so and so, and EB5, but it didn't get that far.

Q. Then you have told all that you ever learned or heard about the Seymour case as to the nature of the complaint? A. That I ever heard about it?

Q. Yes. A. No, sir. I heard that Scull was interested in it. I learned that he was getting information, but it had nothing to do with mine in any way, shape or manner. I tried my game and I didn't get it.

Q. Did he have some arrangement for listening-in? A. If he did, I don't know about it.

Mr. Swayze.—The only method we have for listening-in is through Mr. Woods.

Mr. Moss.—If you can tell us anything in reference to Mr. Scull in this case, I wish you would.

Mr. Lord.—I will say that I heard that Mr. Scull was interested in another phase of it.

Senator Thompson.—Who told you that? A. Scull. If I follow a case, if I am interested enough in a case to direct the putting on of a wire, I am the boss of that case.

Mr. Moss.—What line was Scull working on? A. He is the International.

Senator Thompson.—Did he have a tap on this Seymour wire different from your tap? A. No, he would have put on but he found that I had one on. He wanted to look at my records which I was making for a certain thing, to see if he could get something else.

Q. Did he see your records? A. Some of them I didn't show at all to anybody, because they didn't mean anything.

Q. Did he see any part of your records? A. I think I showed him two or three sheets.

Q. When? A. Currently, while I was getting it. That wire was on, I think, from April 1st to April 20th, and it was probably on the day that I received it, because none of the stuff that I got led to anything which I could take any police action on, and I had to destroy it. It shouldn't be lying around the place

Mr. Moss.—You get nothing on which you could act at all? A. No.

Q. You got nothing on which Mr. Scull could act? A. That I wouldn't say.

Q. Well, you don't know? A. If he took any action based on any information received in that way, I don't know of it.

Mr Lord was excused and Mr. DEEVEY called in.

Mr. Moss.—What is your position and work in the police department? Also state your full name.

Mr. Deevy.— William J. Deevy, I am acting captain of the first branch of the detective bureau of Manhattan.

Q. Sometimes these listening-in on wires cases come under your observation? A. They do sometimes.

Q. Yes. For instance, what was the last case where you listened-in? A. Well, I don't know. I think it was the Harry Stahl case, wanted for shooting Moskowitz over here on the east side, and we got Harry Stahl here about five or six or seven days ago for shooting Moskowitz. That may have been the last. May I refer to my list?

Q. Certainly. A. Seventy-six Carmine street has the name of Ricci Cafe over it, and truck thieves and other thieves used that wire over there.

In 31 Mercer street, a man by the name of Silverstein and Nelson brothers had a place over there, and a thief told me they were receiving goods, and he told me he would give up to me the fellow who was stealing trucks, and two or three days after that he told me on the wire that seven men got a truckload of stuff. After I got the men, we sent down and got the Nelsons. Young Nelson, at least, told me that Milkowitz, at 100 Forsythe street, was a receiver, and we arrested him. Both Nelsons were arrested, and the information that young Nelson gave me led me to send a man to Hartford, Connecticut, where I have caused three arrests up there. They were convicted and about nine thousand dollars worth of goods were recovered. Milkowitz was convicted, the other men were convicted and the two Nelsons, they turned State's evidence.

Q. What part in that did the listening-in on the wires play? A. The biggest part of it.

Q. How? A. In getting the stuff through Milkowitz and Nelson.

Q. Now was that a cut put through in the regular way, signed by the commissioner? A. I suspect it was.

Q. When you use the telephone wires, in every case do you have the signature of the commissioner. A. I don't handle that. I will refer that to my inspector.

Q. But when you have such a case? A. I refer it to the inspector, or I might call Yunge's attention to it.

Q. Now, speaking about cases where you don't use the signature of the commissioner? A. I never had such a case.

Q. Do you know of any cases where the policemen, in pursuit of gambling houses or disorderly houses, cut in on wires? A. Such a thing I have never had anything to do with. All I do is criminal larceny and such stuff as that.

Q. Have you had any cases in which Mr. Burns was interested? A. Burns?

Q. William J. Burns? A. Well, no. Burns had called up on the wire.

Q. You know Mr. Burns? A. I have known him four or five years.

Q. Have there been any cases where the wires were listened-in on where Mr. Burns was interested? A. Absolutely none.

Q. Do you know of any case in which Mr. Burns was interested in which the wires were tapped? A. None ever came under my observation.

Q. When did you see Mr. Burns last? A. Possibly some little while before he went to the coast.

Q. How did you come to meet him? A. Why, I think he came in to see me.

Q. At your office? A. Yes. The reason that he came in to see me, no doubt, was because he was going on that Smith case to the coast. I arrested that fellow Smith in New York. That is the Smith case in San Francisco, the dynamiter, you know.

Q. Has he ever talked to you about any cases in which he was concerned where wire taps were used? A. No, sir.

Q. What case did you use the wire in before the last one you just mentioned? A. Now the date I haven't got. There was the Kindred case — got twenty-two thousand some odd dollars from a construction company, and I had three wires tapped on that thing with no result and Kindred is still a fugitive. There were about three or four that I had anything at all to do with, five at the most.

Q. Just give us a list of the cases that you have in that way? A. Abelson case at 255 Madison street, coffee house and hangout for thieves; Giacamiaco, a drug store down here, where young Rofrano used to be. Seventy-six Carmine street — that is where

Sherwood and Harris used to hang out, and we got somebody over there for some stuff. Thirty-one Mercer street—well, that was where Nelson was arrested. The two Nelsons were witnesses for the State, and we got about nine thousand dollars worth of property. We had Harry Stahl covered for the shooting of Moskowitz. His is still pending. We had three wires on the Kindred case; and Johnny Orio, saloon at Oliver and Cherry streets, hangout for mob, and we got a case of tobacco and we got the thieves. Those are the wires that I have tapped.

Q. In what period of time? A. Well, I can't say specifically.

Q. About how long? A. About a year and a half.

Q. And you have given us all the cases you have had in that time? A. Yes, sir.

Adjourned at 6.20 until eleven o'clock May 24.

Adjourned to May 24.

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**MAY 24, 1916.**

### EXECUTIVE SESSION.

COMMISSIONER ARTHUR WOODS was called as a witness and testified as follows:

Examination being conducted by Mr. Moss:

Q. Commissioner, is there any system of listening-in on wires conducted by police officers which is not accomplished through the assistance of the telephone company? A. Yes, and I am glad to be able to explain just what this is. In the first place, I want to make it clear that I hadn't thought this Committee would be interested in this, since it was not done with the co-operation of the telephone company. The telephone company knew nothing about it at all, but I don't want to stand upon what I believe are my rights to say nothing about this now, because I am glad to assist the Committee in any way in its deliberations where it won't interfere with the police work and the handling of the police cases. I am telling you about this now on the strictest understanding that everything that I say here is absolutely confidential and that noth-

ing will be used either from the record or from the mouths of any of us here without getting my consent to it first.

Q. It is understood and was understood upstairs in the corporation counsel's office before you came down that this is purely and strictly an executive session and that possibly your testimony may be all that the Committee would need if it desires to go further into the matter; and particularly if it desires to do anything in a more public way, you shall be notified before it is done? A. But isn't it also understood that what I tell you here will not be used?

Q. This record itself will not be used publicly. If a public statement is asked of you, it will be taken afresh. Mr. Swayze, counsel for the telephone company, is present, and Mr. Wood says he has no objection, and Mr. Hardy, corporation counsel, acquiesces in his presence. A. But, Mr. Moss, I am right in understanding, am I not, that no one of us is to give out anything that I say here and that the record isn't to be given out unless you get my consent previously?

Q. That is right. If we reach the point of making anything public in regard to this matter, we will call you afresh with other witnesses and take it up anew. A. The situation is simply this: For a long number of years the custom has existed of having the inspectors, the highest uniformed officers of the police department (who are in charge of districts, which is the way in which the police department is organized and divided up) in charge of the general police work of their districts, including the laws that have to do with the so-called vices. These inspectors are not in charge of the detective work of their districts. That is taken care of in a separate organization. They are, however, required to keep the town clean, and that means to enforce the laws with reference to, among other things, prostitution and gambling. These inspectors, the highest officers of the police department, are permitted to direct the plain-clothes men under them to listen-in on telephone wires where they can for the purpose of prosecuting crimes connected with commercialized prostitution and with gambling. It is under that strict regulation that it is confined to these offenses, and it is under the further strict supervision of the inspectors, the highest uniformed officers of the police department personally. That this has been done is perhaps not a matter of public knowledge, because

it hasn't been brought before the public, but it is not a matter which either has been or could have been kept secret. There was no mystery about it.

Q. Pardon me, it has been brought before the public in the publication of two or three cases that have occurred recently in Brooklyn where officers testified—— A. Yes, but only in that way, Mr. Moss, and it has been brought before the public in the same way in other cases, because frequently when the district attorney presents the evidence gathered by the police in cases of that kind, he has to present as evidence matters that were obtained in that way. It has been done in court and has been for some time and has been accepted.

Q. One of these officers — I think his name was Wing — testified that he had cut in on wires in that way thousands of times, and that statement and others like it have had considerable currency in the newspapers recently. That is one of the reasons that I have taken the matter up. I felt that a custom which has been so blazoned by the newspapers and so much discussed could not be passed over by this Committee without proper criticism that we had failed to look in upon that phase of the question. A. As to this man Wing, of course I don't know what he said. I was told what he is reported to have said in the newspapers. I don't know how many cases he has listened-in on in this way. I do remember that a man named Wing, undoubtedly this same man, has been skillful at that and has been used on that kind of work for a good many years. Now, you would like evidently to find out about the number of cases?

Q. Not absolutely. A. Because I will get that for you, if you like, just as closely as I can.

Q. You don't have to get that accurately. We want to see if it is a general practice and how it is regulated. A. The practice is regulated by being put squarely up to the individual responsibility of the officer who is in charge for the conditions.

Q. That is, the inspector? A. The inspector.

Senator Thompson.—I think Mr. Moss has in mind—if the telephone company with 350,000 subscribers coming into their wires see fit in seventeen months to take 350 of them and put them under supervision, that is one thing; if the police depart-



ment took 351 it wouldn't make much difference; but if, as the report is, he tapped a thousand, it makes a different aspect of it. Perhaps it was entirely justified the same as the other, but it is a different aspect, and we ought to have it on record. That is the thing that Mr. Moss had in mind.

A. I will tell you as well as I can approximately now, and I checked this up last night as well as I could to see if I was right in my rough estimate of the number of wires listened-in on in that way. It is something like twenty a month. That is the best I can get.

Mr. Schuster.—How many inspectors have you?

A. Nineteen. Some of them never use it at all.

Q. (By Mr. Moss).—How do you get those reports? Is there a system of reports, or do they come in as they make them?

A. There would be no separate reports sent in as to cases in which wires had been listened-in on in this way. In other words, there is no sort of cross-indexing or segregating especially where inspectors have listened-in on these wires. They simply go into the files with the regular cases. As you know, Mr. Moss, the system of files in the police department has been one of its very weakest. We have been working on it hard so as to get records, and we have made tremendous improvements, but we haven't got yet the situation that we want.

Q. Then, there is no record kept which would show the tapping of a particular wire? A. What you are after now is this—is there in the police department, would it be possible to get from our records a list of exactly what wires for the past year or two years or three years have been tapped for this purpose?

Q. Yes. A. I think I could get that for you almost exactly.

Q. I don't mean you should get it for us, but that you should have it as a record for your own use to which you could refer immediately. A. No, I could not refer to it immediately.

Q. The reason I ask you that question is this—it seems to me that there is a very great power, very liable to abuse, when you consider the history of the police department, consider the kind of men that you are bound to have upon the force, the possibility of their relations with criminals occasionally, with ward

politicians occasionally, with outside forces and influences. There is an opportunity to listen on any wire on the pretext that it is listened-in on for the purpose of discovering a poolroom or a disorderly house. It would seem to me that there should be a special report of a listening-in on a wire. It should be reported and supervised as a thing by itself. I want to know if there is any system of that kind. A. No, there is no system of the kind that Mr. Moss points out. We have done this, and that is we have got a different organization now from what we used to have, in that there is a deputy commissioner in general charge of each borough. That brings the deputy commissioner much closer with the inspectors. The deputy commissioners are over the inspectors, are in charge of this sort of work, each in his own borough. He is in consultation with the inspector about these cases. I don't mean to say by that that a deputy commissioner knows of all cases where wires are tapped. I do mean to say, and very emphatically, that the closeness of touch which that and the other measures we have taken has brought about renders very unlikely any such abuse of power.

Q. Do the inspectors keep any record especially of these wire tapings? A. If I followed up those cases, if I told the inspectors to dig out and go through their cases for the last year and send me a record of every case in which a wire has been tapped and to send me the number of wires tapped, I have no doubt but what I could get it.

Q. Do you think that the policemen understand that they must report to the inspectors every wire that they listen-in on? A. It isn't that way at all. The police understand that they must never listen-in on a wire without the instruction of an inspector. I want to make that clear.

Q. Is there a rule to that effect? A. It isn't written in our book of rules.

Q. How is it drawn in? A. It was the custom that I found when I was there. I have emphasized it personally to the inspectors.

Q. If an officer should break that custom, he wouldn't break any one of the printed laws which you have? A. Oh, yes.

Q. Which one? A. Let me make it clear that the particular

thing that he shall not listen-in on a wire except for these two purposes and that it must not be done without the permission of an inspector is not part of our printed laws, but if that should be violated, a man could be put on charges in spite of the fact that that is not on the printed laws.

Q. Would it be conduct unbecoming an officer? A. I don't know about that.

Q. I think it would be pretty difficult. These officers listen-in on suspicion, don't they? A. These inspectors, the highest uniformed officers, use their judgment.

Q. Well, it is on suspicion. It isn't necessarily on a proved case, but it is on suspicion? They are looking to see if they can make a case? A. That is it.

Q. Then they may listen on innocent wires? A. Oh, yes.

Q. Probably do? A. Probably do.

Senator Thompson.—I was just going to make the suggestion that you have the commissioner give a description of how this cutting-in is made and give it in his own way. How do you get a connection? What is the physical operation?

A. The physical operation is to first find the wire and then clamp onto it a little attachment of wires which lead to a receiver and put the receiver up to the ear.

Senator Towner.—Who issues that order?

A. The inspector of the district issues it.

Senator Thompson.—The telephone company doesn't know anything about it.

Mr. Swayze.—That is only temporary listening-in and doesn't run to any switchboard or anything of that kind?

A. Oh, no, it is a wire off on a feed. The telephone company couldn't know anything about it. It is an aerial wire that you could do that on.

Senator Thompson.—Do you try to do that on wires in cables?

Mr. Swayze.—There the problem of identification is so difficult.

Q. (By Mr. Moss).— Then you are liable to pick up a good many wires before you get the one you are after.

A. (By Commissioner Wood).— If a man comes in unskilfully he would.

Q. But these wires are together in cables generally, aren't they?  
A. You can't do much when you get them in a cable.

Mr. Swayze.— When the circuit is strung on a housetop or a pole, they don't have near the difficulty. They simply go to the location that they want, trace back the wire. They don't have to listen-in on it. When you come to cable wires, you haven't the information as to the lay-out that would allow you to get in on it. You never have had the information as to the lay-out of our cables in buildings or anything of that kind, have you?

A. (By Commissioner Woods).— No. Mind you, Mr. Moss, I don't want to give you any wrong impression about this. If it is a single wire, if you go to a man's house, for instance, or if you go to a saloon where you believe there is gambling going on, and there is just one telephone leading into that, and it is in the country, and one wire leads away, it is easy to find that wire and put your clamp on it. If, on the other hand, you should go to a large house where the wires were in cables, it would be almost impossible to do it, but you might find degrees in between. What you suggested is perfectly possible. I want to have it understood clearly that it is perfectly possible that a police officer hunting for a certain wire might listen onto several other wires of persons who were perfectly honest persons not engaged in any crime, before he got to the wire that he was after. I mean I don't want to appear to be denying that possibility.

Mr. Smith.— Listening-in as the result of instructions of the inspector must make it necessary to make some oral or written report to the inspector for the purpose of preserving the information which you find. Now, are those records preserved?

A. It would be rather hard to preserve an oral record.

Mr. Smith.— I don't know which it is.

A. I think I answered that as well as I can when I told you that I felt sure that if I should get from each inspection district, ask

them to give me a record of the cases in which this method of getting evidence had been used that I would be able to get it.

Q. (By Mr. Moss).—Is there a vice-squad?

A. The thing is worked entirely different from those days. In the first place, the work is concentrated in the inspection districts. Then we have three different squads, any one of which would be a vice-squad. These squads would do the same thing.

Q. They are not under inspectors, are they? A. They are under the most confidential men we have got.

Q. Take the squad of which Costigan is the Commissioner—who does he report to? A. To me.

Q. And then there are two others reporting to the deputies? A. Yes.

Q. Don't they do more of this kind of work than the inspectors do? A. They don't do more of it, but they do it more spread out. They do it all over the city and the inspectors would be confined to certain districts.

Q. They are roving squads? A. Yes, sir, and they are under the closest possible supervision.

Q. Then there are nineteen inspectors and four squad leaders that may be doing this kind of work? A. That is it.

Mr. Schuster.—Have you any evidence in your listening-in that they use code words, the crooks?

A. Yes, decidedly, in certain cases.

Mr. Moss, I just want to make this correction—there are nineteen inspectors, but there are seventeen inspection districts.

I hope that I have given you the kind of information that you want so that you will know exactly what the situation and so that you will be able to make up your mind as to what legislation you want to recommend. I don't want to bring out individual cases, for the reason that I think it will not help you further in your deliberations and for the reason that it will be damaging to police work. I want to give you everything that I can and to lay before you the possibilities, all the possibilities of abuse of this thing, so that you shall see just how far it can go.

Mr. Moss.—If you can make this any clearer to us when you return at three o'clock, we will be thankful to you.

Mr. Schuster.—Do you think it is essential to have all of those inspectors empowered with this discretion for effective service?

A. You bet I do! Mind you, I am not saying, now, that you put the question to me, that it might not be well to have a closer supervision by deputies.

Mr. Schuster.—I would be very much worried about it.

A. I think Mr. Moss made a wise suggestion when he said that he thought it would be a good plan if each case of that kind were reported, and I have that at the back of my mind to consider most seriously, but that the power should remain I feel very firm about. It is a hard job to keep this town clean.

Senator Thompson.—The question that discretion is lodged with twenty-three men, without doubt is one thing, and that discretion should be lodged in you as commissioner and chief of the department is another thing.

A. Of course, I am responsible for the twenty-three, senator.

Senator Thompson.—I understand, but still the responsibility could be lodged in you and they could continue to do effective work.

A. Now, see here, I know you will agree with me here on general principles, and that is, we have the biggest town in the world with every sort of thing in it, the hardest town to police that there is in the world. You take a poor, unfortunate mortal and put him at the head of a police department and say, "Here, police this town. Take care of it. Maintain law and order, protect life and property." You have to give him the power with which he can do it, and if you hamstring him and tie him hand and foot just because of conceivable use of those powers by an incompetent man, the whole thing is impossible. You have to give the man that you give the job to sufficient powers to do that job and then watch him to see if he does it, and if he doesn't do it raise hell with him.

Mr. Moss.—That is why I never believed in demoting inspectors at will. I believe that every man is responsible to the police department and should be held right up to it.

A. I believe myself that you want to give him responsibility and give him the powers that will enable him to meet that re-

sponsibility right, and if he doesn't make good, make it possible to fire him. It ought to be possible to fire me right off if I am not making good.

Senator Thompson.—I suppose it is.

Mr. Smith.—With the limitation of twenty a month requiring this special treatment of listening-in, do you find any justification for putting that power in the hands of twenty-three different men?

A. I don't see that it makes much difference as to the number of cases and the number of men that have the power. The point is that each man in charge of a district has to keep his district clean. He must have this power, though a lot of them never use it.

Mr. Smith.—Could he not have a roving squad operating and limiting the privilege to the inspector or manager of the roving squad no matter what the district was?

A. There you are coming into a matter of police organization. My best judgment is that that would not be good.

Q. (By Mr. Moss).—There is so much difference between your statement of twenty a month and the published statement of what Wing has been reporting on that I would like to have you go into that.

A. I will get for you just as closely as I can the approximate number.

Q. You can talk to Wing and those men and see what they say about it and let us know.

Assemblyman Feinberg.—We feel just as strongly as you do that the efficiency of the police department should not be interfered with and that where the rights of the public at large can be conserved by the procuring of telephone records, they should be procured. The only idea is not to have any abuse, and there should be some one in authority who has knowledge of every act of that kind.

Suspension for lunch until 2.30 P. M.

SESSION OF WEDNESDAY AFTERNOON, MAY 24, 1916.

MARTIN EGAN was called as a witness and having been duly sworn, testified as follows (in an executive session):

Q. (By Mr. Moss).—What is your relation to J. P. Morgan & Co.?

A. I am employed there in a general capacity. I have no special function.

Q. Mr. Mortimer, of the Equitable building, testified the other day that the matter of the Seymours was brought to his attention by you. Is that so? A. That is correct.

Q. And Mr. Lord testified yesterday that he, having taken charge of the matter in the police department, first came into direct contact with it in a conversation with you and Mr. Junius Morgan. Is that true? A. That is true, yes.

Q. And were you directed by Mr. Junius Morgan to proceed in this matter? A. No, sir.

Q. Who did direct you to proceed? A. I don't know that anybody directed me. I made an explanation to Mr. Moss before the session began. I have been in charge of this inquiry as far as J. P. Morgan & Co. are concerned, and it is an intricate one, and, in view of all the circumstances, a somewhat difficult thing to accomplish. I regret that, as far as the particular firm you are after, that has become involved. We have turned over to Mr. Swann the entire record of this thing. I haven't even got it in my possession.

I don't feel that you gentlemen ought to ask me to testify as to it at this time. I haven't a thing on earth to conceal from you or anybody else, but I do want an opportunity to work this out.

Q. Mr. Swann came in here himself, not only voluntarily, but he requested to be allowed to come, and he made statements and assisted in examining witnesses, indeed, conducted the major part of the examinations of the persons in Seymour's office and expressed himself as quite willing that we should proceed in this way that we are proceeding, so that you need not feel that there is anything interfering with it from the criminal standpoint. A. I have this feeling about it, however, and I think you gentlemen will all agree with me, an investigation was in progress at



the time of the publicity, and that meant that it was perfectly hopeless to do anything with it.

Q. Pardon me right there. Mr. Lord testified yesterday that all of the listening-in was done from police headquarters and produced nothing of any consequence, so the case was not listed as a police case and he didn't detail any detective to it. A. That is undoubtedly true. There are at least three phases of this case that we are working on now.

Q. Was that espionage? A. Relating to the theft of these things.

Q. Does that mean that you believe that the practice is continuing? A. There is the very proposition that I don't care to discuss with you here. I will say to you gentlemen here privately that I believe it is still going on.

Won't you just let me go out and resume my investigation? I will be delighted at a later day to lay that whole story before you.

Q. We will pass up this question No. 1. Maybe we will come to something else that you will feel you can easily answer.

I want to ask you if you knew that Mr. Burns was entering Seymour & Seymour's office? A. If I knew?

Q. Yes. A. Yes, surely.

Q. Did you know that he was looking through the papers that were in Seymour & Seymour's office? A. I don't believe that I had any notion as to the papers in Seymour & Seymour's office.

Q. Did you know that he was dictaphoning Seymour & Seymour's? A. I knew that he wanted to, and he subsequently told me that he was.

Q. And when you were part of the arrangement that brought him into contact with the equitable building parties, you knew that that was likely to be done? A. I don't know that I had any accurate thought as to just what would be done. Mr. Burns was placed in charge of the inquiry and we were looking for a thief.

Q. You knew they were going to dictaphone the office? A. I don't remember that I did at that moment. I am not especially familiar with dictagraph business.

Q. But, you have had charge of this business for Mr. Morgan? A. I have not had charge of this sort of business for Mr. Morgan.

Q. You know of the dictagraph? A. Mr. Moss, I don't feel that it is fair for you to go into this thing at this time.

Q. Do you decline to answer that? A. I decline really to answer any questions, and I feel that you gentlemen ought to sympathize with the position which I take.

Q. Don't be too hasty in taking that stand. I am going to ask you several other questions. A. I decline to answer any questions.

Q. That is too broad a declination. A. You see, there is a record —

Q. Just wait a minute. Did you know that the police would be asked to listen-in on the telephone? A. I certainly did.

Q. That answers that question. In how many other cases have you requested the police department to listen-in? A. No other.

Q. Is this the only one? A. Absolutely.

Q. How many times have you met Commissioner Woods in the last year, approximately? A. Probably three times.

Q. Did you talk with him about this listening-in on the Seymours? A. I doubt if I did. We reported to him that there had been a theft and he detailed Mr. Lord to examine the record and the evidence, and it was Mr. Lord who handled it.

Senator Foley.—Mr. Lord testified yesterday that you lunched with him.

A. We did, yes. The case was discussed very generally. Mr. Woods was there to lunch. You don't appreciate my position in this matter, Mr. Moss. I haven't a thing on God's earth to conceal from you gentlemen, but we are at work on this case at this moment.

Q. I have been asking things outside the case upon the general subject of telegrams and telephones, etc. Has the office of Mr. Morgan information concerning telegrams that come in generally from foreign offices? A. No, certainly not. You mean other than their own telegrams, of course?

Q. I am referring to information of the contents of foreign telegrams not their own, or information of the contents of foreign telegrams. A. Oh, nothing at all.

Q. The reason I asked you how many times you had met Mr. Woods, approximately, was because information has reached me that you had met him many times. A. I think three in all.

Q. Would you be willing to say that it had not exceeded a half a dozen times in the course of the year? A. Oh, yes.

Q. And have you conferred with, or has the house of Morgan or the representatives of Morgan, to your knowledge or information, conferred with Mr. Woods or any other police authorities relative to listening-in on the conversation of persons other than the Seymours? A. Absolutely not. That inquiry may have gone to other men participant in the theft of these cablegrams, but not in any other transaction or in any other relationship at any time. I would prefer, gentlemen, to come back here when we get through with this police business, with this prosecution, and I will bring you the whole thing.

Q. I am willing to take a recess for a little period. A. We haven't a thing on earth to conceal from you, and don't misunderstand my refusal to testify. I don't feel that it is just to this case at this moment to do it.

Senator Thompson.—I understand, you personally requested permission to make this Seymour tap?

A. We went to the police with this complaint you see. We had the record at that time recovered from the men to whom the gentlemen wrote the letters.

Q. (By Senator Thompson).—How did you know that the police could tap?

A. I don't believe that I made a direct request that they do so. We were interested in catching this thief, and we conceived that the communication was by telephone.

Senator Thompson.—How did you know that you could get the tap by going to the police, who told you, where did you first get your information that tapping the telephone could be used?

A. I couldn't tell you, Senator. I don't know that I knew.

Senator Thompson.—And you say that so far as you know, the Morgan firm was not using this tapping privilege in the police department in any other case?

A. Absolutely not.

Senator Thompson.—We have information that you had and that is the reason why this inquiry was made.

A. I shall report to my employers, and I am very sure you will hear from them on the subject.

Mr. Moss.—That information came in such a way that we were bound to pay some attention to it.

Senator Thompson.—We don't want to interfere with your investigation, because we are absolutely in sympathy with you, and we realize that that information can be sold just the same as any other if it is correct, and the sale depends largely on its correctness. We want to help you with that and we will, but the other proposition, that wire tapping has been used in other instances, means that it is up to us to find out how far it has gone.

A. Absolutely in no other circumstances except in this theft.

Senator Thompson.—And it was only limited to the Seymour wire?

A. I said to Mr. Moss that the purpose was to catch the thief. He might have telephoned from some other point.

Senator Thompson.—Then, they might have tapped other wires?

A. I haven't any notion that they did, but they may have. I certainly never heard it.

I will be delighted at a subsequent date, when we are out of the woods on this investigation, to confer with you. I certainly shall advise Mr. Morgan and the partners as to this other matter. There isn't a scintilla of truth in it, that they received copies of any other telegrams. I am engaged in a very serious proposition, that is, to find the men who stole those telegrams, and I think we can find them, but there has been such an extraordinary amount of newspaper publicity about it that it makes it very difficult.

Mr. Moss.—Mr. Swann gave us a pretty good elucidation of the case. Suppose we leave it this way, Mr. Chairman, that we have another session with Mr. Egan when he desires it or when we desire it?

A. (Mr. Egan).—Whenever we have completed that inquiry, I am pretty sure I could turn the whole thing over. If I had that record to-day, I would gladly turn it over to you.

Senator Foley.— Was that included in the daily reports of the Burns Agency?

Q. (By Senator Foley).— Who got those reports?

A. I got some of them, most of them. We were trying to catch a thief. On that other, we will be very glad to show you that there isn't any truth in it.

May I see at some stage a transcript of what has been said here?

Senator Thompson — Yes, certainly.

Witness dismissed.

POLICE COMMISSIONER WOODS:

Q. How many times have you met Egan in the last year? A. Do you mean in twelve months?

Q. Yes, approximately. A. I don't know — three or four times, I guess.

Q. And where generally did you see him? A. Generally in my office.

Q. Did he ever confer with you about any other tap than the Seymour tap? A. I don't think so.

You asked me to get for you the figures as to the number of taps, and you also asked me to get for you the statements of these men that were subpoenaed, Wing and those others. Perhaps these figures won't help you to draw any conclusions. For instance, in the second inspection district in Manhattan — that is the lower West side — there have been four wires listened-in on since October, 1915. In the third inspection district, that is, the old tenderloin, two in two years.

The reason I give you that figure is that this is while Inspector Morris was in charge. He was in charge approximately two years.

In the fourth inspection district, eight in seven and a half months. The reason I give you seven and a half months is that the present inspector has been there that length of time.

In the fifth inspection district, there haven't been any since the new inspector went in and that was six or eight months ago.

In the sixth inspection district, there was ninety-one in twenty-eight and a half months. That is the upper part of the town.

In the first district, the figure I have here is twenty-nine in twenty-eight and a half months, but I think there are some more that ought to go in.

Now, in Brooklyn, I haven't been able to get that yet, but the rough idea was that in Brooklyn there were not more than two or three a month.

Q. Does that include Coney Island? A. Yes, that includes Coney Island. I will get you the exact figures later.

(The remainder of the testimony of Mr. Woods off the record.)

JOHN PURROY MITCHEL:

Senator Thompson.—Since yesterday, the Chair has given a statement, which has been taken (I assume it has been published), to the effect that we have not changed our mind in relation to the permission of our distinguished witness to give the conversations taken over the telephone in regard to this charity case. However, we believe that the Committee, inasmuch as we have the insistence of the mayor that it be taken and that it is revelant, will defer to his judgment in relation to the matter and ask him to take the entire responsibility for that. I think the Committee will take that attitude. Do you want to be heard? (Referring to Mr. Tully.)

Mr. Alfred Tully.—I simply wish to say that I renew what I said yesterday and submit to this Committee the impropriety of permitting the mayor to read alleged conversations taken by policemen, furnished on a slate, then on a piece of scrap paper, and then put on a typewritten sheet. The matters which, if the mayor takes the responsibility, he is about to read, are matters which I submit upon which he has no personal knowledge as to the correctness of the conversations that appear in this typewritten form. It wouldn't be allowed in evidence in any court of law, and it should not be permitted here; and I assume that what is to be read, if it is to be read, is not read with the permission of the Committee and contains no right of privilege attaching to those communications.

Mayor Mitchel.—I have contended, and do now, that as a witness before your Committee I have the right to testify to all

the facts that are revelant to this inquiry. Being here as a witness, I shall proceed along that basis.

Q. (Mr. Moss).— I would like to ask a question right here, because I want to keep this record straight. The mayor has said several times that he has facts here. Now, I want to know, Mayor, whether the matters that you intend to read are original memoranda of these conversations?

A. What do you mean by "original memoranda?"

Q. The memoranda that were made by the persons who say that they heard the conversations? A. These are the copies of the original memoranda made by these persons.

Q. Who made the copies? A. They were made, I believe, in the police department.

Q. Well, if you don't know those facts, how can you say they are facts that you have? A. Because I have the verification of the accuracy of these copies from the police commissioner.

Q. How have you the verification of the accuracy? A. By his statement to me.

Q. Where are the original statements? A. In the possession of, I think, the police commissioner, unless in the possession of the grand jury.

Q. I ask you that question because it has been said, I don't know how truly, that the original had been destroyed. A. Of these?

Q. Yes. A. Not to my knowledge.

Q. It has also been said that the custom of the police department is not to keep the originals for fear that the originals might be communicated. A. In the great majority of cases, as soon as the usefulness of the information obtained has passed, it is the custom, as I understand it, from the information I have had, to destroy the originals, in order that there may be no information disseminated which would be injurious to anyone.

Q. Do you know to whom the originals were given? A. In the first instance?

Q. Yes. A. To the police commissioner.

Q. Do you know to whom those papers passed, who had them in possession? A. To the best of my knowledge, the police commissioner has retained them.

Q. Do you know how many copies were made? A. No, I do not.

Q. Do you know anybody in whose possession copies of those originals came? A. Have ever been?

Q. Yes. A. The special assistant corporation counsel had some copies.

Q. Have you personal knowledge of these conversations which you say are facts? A. Naturally, personal knowledge could be obtained only by listening over the wires. I have not listened over any wires.

Mr. Tully.—The officers who took the statements testified on oath before the Strong Committee that they were taken on a slate.

Mayor Mitchel.—Is this gentleman testifying under oath? I think he should be sworn if he is going to testify.

Senator Thompson.—Who took this alleged testimony?

Mayor Mitchel.—Before the grand jury?

Mr. Tully.—The only acquaintance that I have of the testimony before the grand jury is that an indictment against you was voted and failed by one vote.

Q. (Mr. Moss).—Mr. Mayor, appealing to your knowledge of the law, as a lawyer, I ask you whether, in your opinion, the matters which you propose now to put in evidence would in your judgment be admissible in a court of law?

A. In my judgment they would.

Q. That is as hearsay testimony? A. The facts I propose —

Q. Those are not facts, Mayor. You can't say they are facts. A. You asked me, Mr. Moss, whether I thought this would be admissible in a court of law. I think it would.

Q. You said "yes" as facts, but do you consider these under any legal rule to be facts as testified to by you, aren't they hearsay? A. I think that my testimony on this subject is as admissible before this Committee as the great body of evidence that has been received by the Committee in the course of its hearings.

Q. I asked in a court of law? A. Probably not in a court of law, but this is not a court of law.



Q. I understand, but questions have been raised here whether or not you were taking advantage of the privilege of this Committee to spread upon the public record a statement which if made outside of a legal proceeding would be actionable as libel or slander. That has been suggested, and it is one of the things that I have wanted the Committee to keep straight upon. A. The Committee must make its own decision.

Senator Thompson.—Senator Towner asked that it be shown on the minutes of the Committee, under those circumstances, that he dissents from the action of the Committee in receiving these conversations. Senator Foley as well.

Mr. Moss.—As the lawyer for the Committee, whose duty it is to keep the Committee straight in its responsibility and its liabilities, I maintain the objection which I made originally. I don't think this testimony which is exceedingly important and which the mayor ought to put out, if he believes it, should be put out in a way that the mayor should assume full responsibility for it, and I would go with him, or do anything that I could do to help to have this matter get into a criminal court where it belongs. I think if Father Farrell and those other priests have done the things that the mayor says they have done, they ought to be arrested at once. They ought to be prosecuted. But I don't think that the privilege of saying these things in public without the responsibility for libel or slander should be got at the expense of this Committee. If those men have done those things, I would be among those that will go against them.

Senator Thompson.—What do you suggest to avoid that?

Mr. Moss.—I make my objection to the admission of the testimony.

Q. (By Mr. Moss).—You appeared before the grand jury?

Mayor Mitchel.—Yes.

Q. Did you testify to this? A. Some of it.

Q. The whole conversations sent to the grand jury? A. I can't tell you whether all of them went in or not. I certainly cannot put all of them in.

Q. All that you are going to use went there, did it? A. That

depends on how much I give you. I have here vastly more than I gave the grand jury.

Q. Well, will you be content to limit yourself to those that you gave to the grand jury? A. I will, if you wish.

Q. And I understand you signed a waiver of immunity there? A. I did.

Q. All right, go ahead.

Mr. Schuster.—I wish to enter an objection to the reception of the testimony as a matter of personal objection.

Senator Thompson.—The entire Committee objects to receiving this testimony, but we will sit here and listen to you as long as you insist on it.

Mayor Mitchel.—Before giving you these conversations I desire to make this brief statement. For two years and a half, as the representative of the people of this city, I have been endeavoring to secure humane treatment and proper care for the 22,000 homeless and dependent children committed as city wards to private charitable institutions. I have been endeavoring to secure proper administration of the \$5,000,000 of public funds, annually disbursed to these institutions for the care of the city's wards. That is the cause I am fighting for, and I shall continue to fight for it, no matter what damage it may bring to me, for it is a matter of public duty and personal conscience.

Senator Thompson.—The Committee rather think, Mr. Mayor, that you should limit this to the wire-tapping proposition.

Mayor Mitchel.—I am coming right down to that. This is introductory. This is very brief, Mr. Chairman.

In this work I have found myself and my commissioner of charities opposed, vilified, misrepresented and obstructed by certain interests and influences. I have endeavored to learn what these influences are which have sought to interfere with or to control a branch of the government of this city. In connection with the inquiry conducted by the Governor's commissioner, Mr. Charles H. Strong, under the Moreland act, it came to the knowledge of the city authorities that certain crimes had been committed. In securing the evidence of the commission of these crimes

the police department brought to light the conspiracy which was hatched to frustrate the work of the department of charities.

The evidence of the commission of the crimes is also the evidence of the existence of this conspiracy against the government. It is not the Catholic church which has so conspired to prevent justice and obstruct or control government, but a small group within the church, co-operating with a few non-Catholic laymen. It is this group I charge with conspiracy. This group I am convinced is not representative of the church or of the great body of right-thinking, honest Catholics of this city. Jews, Protestants and Catholics alike will all think as I do on this question when the disguises are removed from the naked truth and the issue which is beneath it all, the decent care of the twenty-two thousand children for whom the city of New York must act as father and mother, becomes clear to all.

As trustee of the public funds which the city annually disburses to those institutions, as the chief executive responsible for the welfare of these helpless children, unhappily torn by economic circumstances from their homes and given over for a time to the care of the city as a foster parent, and as mayor, responsible for the honesty and efficiency of the police department, it is my right as well as my duty to make known to the public all of the facts in this matter, when as now it happens that these facts are pertinent to your inquiry and relevant to the question under consideration, namely, the propriety of the action of the police department in supervising the telephone wires of the Potters and of Father Farrell, it becomes doubly my right to be heard fully in public upon this question.

The evidence, Mr. Chairman, is this, a conversation of the 18th day of March, 1916, between Mr. Hebbberd and Mr. Potter.

“Mr. Hebbberd.—Hello, Dr. Potter, what is new?

Dr. Potter.—I don't know much.

Mr. Hebbberd.—I think you had better stay away for a short time.

Dr. Potter.—Oh, I will. I am staying away from the office and I will not show up Monday, either.

Mr. Hebbberd.—Yes, do that until after Tuesday, because I think they will finish by Tuesday.

Dr. Potter.— They will get their dose to-morrow. They are going to get Hail Columbia. When may I go to see you?

Mr. Hebbard.— I will be over to see you to-morrow, but you must not leave anybody in the house.

Dr. Potter.— No, I looked out for that."

Off March 20.— Potter and Walter Drummond speaking:

"Dr. Potter.— All right. What did you hear yesterday?

Mr. Drummond.— Oh, quite a lot. What did you hear yesterday?

Dr. Potter.— Oh, quite a lot. I am not going to the office to-day, as they are looking to get me on the witness stand."

Mr. Drummond.— Look out that they don't get you on the telephone.

Dr. Potter.— Oh, we are careful of that. You see, the girl answers the phone and she finds out who it is first.

Mr. Drummond.— I would keep under cover, as they will get you if they want you, and you know they will blame you for everything.

Dr. Potter.— Well, I know I have done everything.

Mr. Drummond.— Well, you didn't sign your name to it, did you?

Dr. Potter.— That is about all I didn't do, but if they get me on the witness stand I will tell about seven thousand things they don't want known."

Mayor Mitchel.— Conversation of March 20, 1916, Hebbard and Potter speaking:

"Mr. Hebbard.— Well, we have put it all over them to-day and they have adjourned.

Dr. Potter.— That is good.

Mr. Hebbard.— Now, you have got to keep out of the way for a couple of days and I think they will wind up, and I will keep you posted.

Dr. Potter.— What did they want to know?

Mr. Hebbard.— Oh, they questioned me on those telephone calls from you, but I explained them all.

Dr. Potter.— All right, that is fine. Now don't forget to keep me posted.

Mr. Hebbard.— I wont, you just keep under cover. Goodbye."

Mayor Mitchel.—Conversation of March 20, Father Farrell and Potter speaking:

“Father Farrell.—Hello.

Dr. Potter.—I just heard from Hebbard and he told me he put it all over them to-day and he said he sprung that detective story on them and said that is what killed Mulry, and he knocked them cold. He also advises us to keep under cover, as they are trying to find out who got those pamphlets.”

Mayor Mitchel.—Conversation of March 21, 1916, Potter and Father Deneen speaking:

“Dr. Potter.—Dr. Potter speaking.

Father Deneen.—What is new?

Dr. Potter.—.”

Mr. Moss.—Who is Father Deneen?

Mayor Mitchel.—I really don't know his connection. He is a priest of this diocese.

Q. He is the private secretary of Bishop Hayes- A. I don't know that he is.

Q. I thought you knew everything about it. A. No, I don't know that. I assume you know and I will take that statement as true.

Q. I have made it my business to know a little about the case. A. Deneen was new.

“Dr. Potter.—Well, I heard from Hebbard and he says he put it all over them and they adjourned.

Father Deneen.—Well, what do you think of that showing of the Holy Name Society? They came five thousand strong and they represented fifty thousand voters, and they sent notices to the Governor and they say he is about to call it all off.

Dr. Potter.—You know they are trying to get me.

Father Deneen.—Well, you just keep out of the way.

Dr. Potter.—All right. Goodbye.”

Mayor Mitchel.—Conversation of March 31, Farrell and Potter speaking:

“Father Farrell.—Hello.

Dr. Potter.—I heard from Hebbard this morning and he said they are going to make further investigation. They are going deeper, and he said I should get everything out of sight at home and in the office and remove all the stuff. I don't know how I am going to get back into my place. I have the papers all locked in the desk, but that will not hinder them from obtaining a warrant under false pretenses and get all the papers.

Father Farrell.—Are they of any value to them?

Dr. Potter.—Certainly.

Father Farrell.—Suppose I send Mike over to you and you give him instruction and he can go to the office and bring all the stuff out of there.

Dr. Potter.—I think I will tell Dean to do that, but before I do I will let you know.

Father Farrell.—We must be very careful and you must be careful to see that they do not tap your wire. Did you see The World this morning?

Dr. Potter.—No.

Father Farrell.—They are very anxious to find out who our printers are.

Dr. Potter.—We must stick tight, because they are going through this thing desperately. I really don't know what I am going to do about those papers in my desk in the office.

Father Farrell.—Let me know and I will send Mike over to you and he can bring them all to you in a dress suit case.

Dr. Potter.—I think I will get Dean to do that and if not, I will let you know later. I am going to stay right here where I am for the next thirty-six hours. I could not dare to take a chance and get those papers myself. I couldn't think of it.

Father Farrell.—I am going to stay in also and be very careful.

Dr. Potter.—Hebbard was all excited in speaking to me this morning and told me to be extremely careful.

Father Farrell.—Well, we will stay indoors all day.

Dr. Potter.—Yes. If you hear anything, call me up."

Mayor Mitchel.—Conversation of March 31, 1916, Potter and Hebbard speaking:

"Dr. Potter.—Hello.

Mr. Hebberd.— This is Hebberd again.

Dr. Potter.— Oh, yes.

Mr. Hebberd.— Is it all right?

Dr. Potter.— Yes, sure. Go ahead.

Mr. Hebberd.— Anything that you know?

Dr. Potter.— I had everything removed away from the office this morning that I thought would do any damage to us.

Mr. Hebberd.— Did you send for them.

Dr. Potter.— Sure. There is nobody can get into my office without breaking in. Even the people in the building cannot get in.

Mr. Hebberd.— Anything new from Albany?

Dr. Potter.— No. He seems to be wobbling.

Mr. Hebberd.— You must keep still for a time.

Dr. Potter.— Oh, yes."

Mayor Mitchel.— Conversation of March 21, 1916, Potter and Father Deneen speaking:

"Dr. Potter.— I spoke to Hebberd and he told me everything is in wild alarm. They are trying to get me into the game there by exposing me, but I had very carefully all the papers removed this morning from my office and put into a safe place.

Father Deneen.— Do they know where you are?

Dr. Potter.— I am in Philadelphia, and all over, but still I am home.

Father Deneen.— Have they served you with process?

Dr. Potter.— No, there is nobody here and there is nobody around here, either. Hebberd fears the identification of the pamphlet, but there is no fear of that. He is incommunicado. Ha! Ha! We will stand by all right. We have bursted their slat. This is a case of Frenchmen and the Kaiser."

Senator Foley.—Was all this taken down in longhand, Mr. Mayor?

Mayor Mitchel.— I don't know that my testimony would be competent as to that.

Q. I mean as to the fact. A. Upon my word, I wouldn't definitely answer as to that. I think it was.

Senator Thompson.—How did you get those? Were they delivered to you from your office?

A. By the police commissioner.

Q. How often? A. I think I got them all in one group.

Q. Can you tell the date? A. Quite a time subsequent to the conclusion of taking the conversations.

Q. So you didn't get these conversations each day as they were taken? A. No.

March 21, 1916, Potter and Drummond speaking:

“Dr. Potter.—Hello, Walter. Has Dean been there yet?

Mr. Drummond.—Yes, he is here now. Do you want to talk to him? I will put him on.

Dr. Potter.—Yes.

Dean Potter.—Hello, Doctor.

Dr. Potter.—Hello, Dean. How did you find things in the office? Any breakages?

Dean Potter.—No, everything was all right on the Potomac.

Dr. Potter.—Did you look into the inside doors?

Dean Potter.—Yes.

Dr. Potter.—Was the desk all right?

Dean Potter.—Yes, it was closed.

Dr. Potter.—Did you close that also?

Dean Potter.—Yes, everything is all right.

Dr. Potter.—Did you get it all?

Dean Potter.—Yes, I have it here.

Dr. Potter.—Leave the bag with Walter.”

Mayor Mitchel.—March 23, 1916, Potter and a person unknown speaking:

“Dr. Potter.—Hello! Is the boss there?

Person answering from 1457, Farrell's telephone number.—No, he is over at the church. He has a funeral on.

Dr. Potter.—Well, this is Potter.

Person.—I knew who it was.

Dr. Potter.—You tell him to keep out of the way, as the process servers were just here looking for me.

Person.—They didn't get you, did they?

Dr. Potter.—No, I am in Philadelphia. That is all. Good-bye.”



Of March 22nd, Dr. Potter and Hebberd speaking:

"Dr. Potter.—Hello.

Mr. Hebberd.—Hello, Dr. Potter.

Dr. Potter.—Who is this, Hebberd?

Mr. Hebberd.—Hold the wire.

Dr. Potter.—What is new?

Mr. Hebberd.—Not very much, only that we hear that this is the last day.

Dr. Potter.—They have process servers here this morning, but I am away.

Mr. Hebberd.—Well, I am going to keep out of the way, too, as they might be looking for me.

Dr. Potter.—Yes, that is right. Good-bye."

Of March 22, 1916, Dr. Potter and Father Dineen speaking:

"Dr. Potter.—Hello, is Father Dineen there?

Father Dineen.—Who is this, please?

Dr. Potter.—He knows.

Father Dineen.—Hello.

Dr. Potter.—Hello, what do you know?

Father Dineen.—Nothing.

Dr. Potter.—I just heard this is their last day.

Father Dineen.—Let us hope so.

Dr. Potter.—They were just trying to serve me.

Father Dineen.—Is that so?

Dr. Potter.—But I am not in.

Father Dineen.—That is right.

Dr. Potter.—Well, I think we ought to do something now. If we don't they will get away with it. We must strike them a blow that will stagger them now. Is it time?

Father Dineen.—Yes, I guess so."

Of March 22, 1916, Dr. Potter and Mr. Muller:

"Dr. Potter.—This is Dr. Potter.

Mr. Muller.—This is Mr. Muller, Doctor.

Dr. Potter.—I received your message.

Mr. Muller.—I wanted to let you know that I am to appear at the Bar Association to-morrow at 10 o'clock by the order of the Governor.

Dr. Potter.— I don't know what they could want you for.

Mr. Muller.— Well, I am to go.

Dr. Potter.— Well, I think if you could put it off twenty-four hours or forty-eight hours the whole thing will be dead.

Mr. Muller.— Well, I will let you know.

Dr. Potter.— Fine."

March 23, 1916, party unknown and Dr. Potter:

" Party.— Is this Dr. Potter?

Dr. Potter.— Yes.

Party.— Did he get in?

Dr. Potter.— No, Mr. Muller was on the stand this morning.

Dr. Potter.— Yes, I know. He told me.

Party.— What did he tell you?

Dr. Potter.— I don't dare tell you over the wire. Do you think my wire is tapped?

Party.— You don't say so, how do you know?

Dr. Potter.— According to what happened yesterday, I am going away forty-eight hours to Philadelphia."

Of March 24, 1916, Dr. Potter and unknown party speaking:

" Dr. Potter.— Well, what is the use of talking, I have stayed in the house pretty near a week and they have been trying to get me every way I know. They telephoned but Julia was on the job, and they didn't get away with it. Now, I am sick and tired. I see that none of the others remain in, and I am not going to remain in much longer.

Party.— Well, that is right. I am going to call up New York and find out what they are doing.

Dr. Potter.— Oh, they won't do anything.

Party.— All right, I will see you or call upon you later. Good-bye."

Dr. Potter and Monsignor Dunn talking.

Mr. Moss.— When you give these conversations, who calls up and on whose wires does this occur? You haven't done that so far or the dates ——

Mayor Mitchel.— I have been supplying the dates. This is March 24, 1916.

Mr. Moss.—So that the wires can be located.

Mayor Mitchel.—I can give that and I will if I have it.

(From Flatbush 948 to Plaza 4311.) (Same paper.)

“Dr. Potter.—Hello, is Monsignor Dunn there?”

Monsignor Dunn.—Who is this?

Dr. Potter.—Dr. Potter.

Monsignor Dunn.—Good morning, anything new?

Dr. Potter.—Yes, there is a lot of new things.

Monsignor Dunn.—Is that so? What is new?

Dr. Potter.—Well, Homer Folk is going to Albany.

Monsignor Dunn.—Are you sure of that?

Dr. Potter.—Yes, a friend of mine saw him buy a ticket.

Monsignor Dunn.—What do you think he is going there for?

Dr. Potter.—He is going up to see the Governor.

Monsignor Dunn.—Well, what can we do?

Dr. Potter.—Keep on hammering at them.

Monsignor Dunn.—In what way, with the new pamphlet?

Dr. Potter.—No, we ought to pay for a column in the newspapers.

Monsignor Dunn.—Yes, you know I never could persuade Murry to do anything. I told him they were a lot of crooks and to get right at them, but he says he can handle them.

Dr. Potter.—You know I don't want to be the goat like in 1910 when I was the goat, and I was the goat for six years.

Monsignor Dunn.—Well, you won't be the goat this time. We will make a sheep of you.

Dr. Potter.—All right then, I will be the sheep.

Monsignor Dunn.—I will go right up to Twenty-ninth street and see what he says about it.

Dr. Potter.—I will tell you what I would like to do. I would like to take a run over to see you to-night after dark.

Monsignor Dunn.—Well, you better not; they will serve you with a subpoena.

Dr. Potter.—I aint afraid, they can't get me. I can get out two different ways, and if I once get a start they will never get me.

Monsignor Dunn.—All right, I will call up Twenty-ninth street and I will call you later.”

Outside called 948 Flatbush, which is Dr. Potter's wire. Conversation between Father Farrell and Dr. Potter, March 24, 1916:

"Father Farrell.—Hello, is the old gentleman there?

Dr. Potter.—Yes, hold the wire. Hello!

Father Farrell.—Higgins didn't get that last night but he will have it to-day and I will send it to you.

Dr. Potter.—They have adjourned until Monday when Kingsbury goes back on the stand.

Father Farrell.—Yes, Doherty and the inspectors go on then.

Dr. Potter.—So that is the way.

Father Farrell.—You know they are looking for one man—you know?

Dr. Potter.—Oh, yes.

Father Farrell.—I will send you fifty dollars and you slip away this afternoon. I will send it over with Mike and I will send the address of my sister, and you will write there and she will bring the letters over to me.

Dr. Potter.—Yes, I guess it is kind of dangerous to stay here.

Father Farrell.—Yes, you take a trip to Atlantic City or some other place and I will look out for you.

Dr. Potter.—But I would like to get that from Higgins.

Father Farrell.—Well, I will get that from him and send it over with Mike. Now you get ready and I will send everything over with Mike.

Dr. Potter.—All right, good-bye."

Outside again called 948 Flatbush.

Mr. Moss.—Are you able to identify that any more than saying outside, you don't know what wire it was?

Mayor Mitchel.—The information I have with me does not identify it further than that.

Outside call, 948 Flatbush, conversation of March 24, 1916, between Monsignor Dunn and Dr. Potter:

"Monsignor Dunn.—Hello, this is Monsignor Dunn.

Dr. Potter.—Hello.

Monsignor Dunn.— He is going up to see the cardinal and he is likely to stay there all afternoon, so I don't think I can see him before to-night.

Dr. Potter.— Well, I suppose we will have to wait. I heard from Farrell and he says that Higgins advises me to leave the State and get out of the way.

Monsignor Dunn.— What is that for?

Dr. Potter.— Well, you see, they are liable to get out a search warrant and come and get me in the house, and if I leave the State they can't do anything.

Monsignor Dunn.— Well, where do you want to go?

Dr. Potter.— I don't know, anywhere outside of the State. You know you can't choose your place now.

Monsignor Dunn.— Well, I will tell you what I will do. I will give you a hundred dollars. Can you send some one up for it?

Dr. Potter.— Yes, I guess so. Where will I send for it?

Monsignor Dunn.— Up to the chancery.

Dr. Potter.— I thought you closed this afternoon.

Monsignor Dunn.— Yes, but I will keep the door open and I will have it in an envelope. Now, don't forget to send some one over and I will have that in a sealed envelope."

Conversation of March 26, 1916:

Mr. Moss.— Do you know who Father Dunn is?

Mayor Mitchel.— Monsignor Dunn, that is all I know.

Mr. Moss.— Is he the chancellor of the diocese of New York?

Mayor Mitchel.— It was my impression that he was. Somebody told me yesterday he was not, but I believe he is.

Conversation of March 25, 1916, from 948 Flatbush to Worth 4998, between Dr. Potter and Walter Drummond:

Mr. Moss.— Can you give the time of day there?

Mayor Mitchel.— No, I haven't got that.

" Dr. Potter.— Mr. Drummond?

Mr. Drummond.— Hello, Dr. Potter.

Mr. Potter.— Anything new?

Mr. Drummond.— Not a thing.

Dr. Potter.— I am going to slip out of the city, it is necessary, and it is indispensable that they don't get me on this matter.

Mr. Drummond.— How is everything otherwise?

Dr. Potter — Everything is all right, and I will let you know where I will be."

Conversation of March 25, 1916, between Dr. Potter and Father Farrell, from Flatbush 948 to Flatbush 1457:

" Dr. Potter — Father Farrell there?

Father Farrell.— Who is this, please?

Dr. Potter.— He knows and you know.

Father Farrell.— Hello.

Dr. Potter.— Hello, boss.

Father Farrell.— Hello, Dr. Potter, anything new?

Dr. Potter.— They have been on my trail all night; have a fellow planted behind a tree across the street from here, at least up to the time that I went to bed.

Father Farrell.— You don't say? They are hot after you.

Dr. Potter.— If I had an automobile I could get away from them. I think it would be better. What chances have I to get that testimony?

Father Farrell.— I expected to have it yesterday, but I will send it to you to-night sure. I will rush it right over to you as soon as I get it. I will send Mike over with it.

Dr. Potter.— What is a good place in Atlantic City?

Father Farrell.— There is a place called the Strand. It is the place where all of the priests go.

Dr. Potter.— Come down there on Monday.

Father Farrell.— No, not on Monday — Tuesday will be better."

Conversation of March 25, 1916. Dr. Potter calling Worth 4598. Dr. Potter and other party unidentified:

" Is Mr. Drummond there?

Other party.— Who is this, please?

Mr. Potter.— Put Mr. Drummond on, you know who this is.

Other party.— Oh, yes.

Dr. Potter.— There are three fellows outside laying for us.

There are two packages in the office on the left of mine; will you put them into my office and I will get them to-morrow?

Other party.— Sure, I will do that. If you like, I will send them over right now.

Dr. Potter.— I don't want to trouble you so much.

Other party.— That is all right; I will send Joe Scully over with them.

Dr. Potter.— Well, all right, but only send one package, the smaller one.

Other party.— What chances has he in getting in?

Dr. Potter.— He will get in all right.

Other party.— I will tell you how you will know him. He is wearing a brown tie.

Dr. Potter.— All right, Walter, good-bye."

Senator Thompson.— Are you giving these in chronological order?

A. I am, up to the present time.

Conversation of March 25th, beside outside call and 1457 Greenpoint, between Father Farrell and person unidentified:

" Other party.— Hello, Father Farrell?

Father Farrell.— Yes, this is he.

Other party.— I want to thank you for that pamphlet. I like it very much and you ought to fire another broadside.

Father Farrell.— Yes, but I am going away Tuesday.

Other party.— What for? Did they call you again?

Father Farrell.— No, but you can't tell; they might.

Other party.— How long are you going to stay?

Father Farrell.— That I don't know.

Other party.— Why?

Father Farrell.— I can't tell you the reason over the telephone."

Conversation of March 25, 1916. Dr. Potter called Father Farrell:

" Father Farrell.— Hello?

Dr. Potter.— Hello, Father Farrell, please.

Father Farrell.— Yes, this is Father Farrell. Who is this?

Dr. Potter.—Potter.

Father Farrell.—That boy got back all right. He said one of the men got on the car and got a transfer.

Dr. Potter.—Yes, we saw him follow the boy.

Father Farrell.—Well, he beat him out. He got off the car a couple of blocks away and he worked his way around here and they didn't see where he went.

Dr. Potter.—That is good. You know, there are three of them, and they have a large auto here.

Father Farrell.—Got the number?

Dr. Potter.—Well, I am going to wait until after twelve to-night and then I am going to go over to New York and I will get another train.

Father Farrell.—Yes, that is about the best thing that you can do. Get out after twelve and they can't serve you.

Dr. Potter.—When are you going?

Father Farrell.—When I told you.

Dr. Potter.—Well, I would advise you to get away as soon as you can, as they will get you if you don't.

Father Farrell.—Well, I will meet you down at the hotel I told you about."

Conversation of March 25, 1916, between Father Farrell and Hebbard, outside wire called Greenpoint 1457:

"Father Farrell.—Hello?

Hebbard.—This is Hebbard.

Father Farrell.—I got you.

Hebbard.—They are after me.

Father Farrell.—I know that.

Hebbard.—I hope they can't get me.

Father Farrell.—Be careful.

Hebbard.—Yes.

Father Farrell.—I am going away to-morrow.

Hebbard.—That is right. Stay away for a week.

Father Farrell.—P is gone.

Hebbard.—Yes, I know.

Father Farrell.—They subpoenaed my sexton to-day.

Hebbard.—What does he know?



Father Farrell.— Nothing.

Hebberd.— What do they want him for?

Father Farrell.— I suppose for carrying messages.

Hebberd.— I hope he won't say that I was with you.

Father Farrell.— He don't know you.

Hebberd.— That is good. When I call you up after this my name will be Diamond.

Father Farrell.— All right.

Hebberd.— Let me know anything that you hear.

Father Farrell.— Where can I get you?

Hebberd.— Gramercy 6364, Irving Hotel, 26 Gramercy Park.

Father Farrell.— That is your home?

Hebberd.— Yes.

Father Farrell.— I will say that I am Ryan."

Conversation undated. 948 Flatbush called 801 Madison Square. Between Mr. Potter ———

Q. You say that is undated. Have you any information as to whether you have got that in its regular order? A. I have no objection to omitting this one.

Q. I don't ask you to omit it. But I am trying to see if you can date it. A. I can't tell you because my notes here contain no date.

Q. So far as I am concerned, my objection was overruled, and I think now that anything is going in you might as well put in all you have. But all I want to do is, as you are going along to give all the particulars that you can give, so when it is taken up again there will be some intelligence. A. Yes, that is what I am trying to do.

Conversation undated. 948 Flatbush called 801 Madison Square. Between Potter and Father Deneen:

"Dr. Potter.— Hello, Harry.

Father Deneen.— Hello, Doctor.

Dr. Potter.— Did you hear anything from the seat of war?

Father Deneen.— No, not a word. Maybe it is a little too soon to. You hear anything?

Dr. Potter.—No, but we will soon hear; just as soon as the pamphlets get around.

Father Dineen.—How many were given out in Brooklyn?

Dr. Potter.—About 12,000 in Brooklyn and 20,000 in Manhattan. We will soon have them on the run. I thought we would have them on the blink by this time. I think we will put them out of business. They are on the run now.

Father Dineen.—Yes, when the pamphlets get around there will be some time."

Conversation of March 19, 1916. Outside called 948 Flatbush. Potter and Father Farrell:

"Dr. Potter.—Well, there is a lot of pamphlets around; I see the Tribune says there were 7,000 distributed.

Father Farrell.—I see they are going to send stenographers into the churches.

Dr. Potter.—They can't touch anybody for what is said in the churches. Nobody is amenable for what is said in the churches. The World has gone far enough in its article. We have got better advertising last week. Did you send to Albany? That is the main thing.

Father Farrell.—Yes, that is attended to. Have you got enough of the pamphlets?

Dr. Potter.—Yes, but we can get all we want; it is still set up; all we have to do is to put it on the press. That is the last part. I have got it under lock and key here.

Father Farrell.—If I send over for it to-morrow can I have it?

Dr. Potter.—Yes, but you must send someone that we know or we would not let him in. We will not open the door for anyone we don't know.

Father Farrell.—I will send my secretary. Do you know him?

Dr. Potter.—All right. We can peek at him through the glass."

Of March 20, 1916. Flatbush 948 called Worth 4343. Potter and Hebbard:

Q. Who is Hebbard? A. He is in the employ of Martin B. Brown, the printers, and is one of their principal men.

"Potter.—This is Dr. Potter. Now, they may come to make inquiries about these pamphlets to-day, so don't give them any information at all.

Hebberd.—Who may come? The newspaper men?

Dr. Potter.—I don't care who comes; don't give them any information at all. Just protect our interests."

Conversation of March 20, 1916 between unknown party and Dr. Potter. Outside called 948 Flatbush:

"Unknown party.—Yes, that would be a good idea. I would like to get a line on how you first came to publish your pamphlets and then explain that and let it come under some big man and let them fight it out.

Dr. Potter.—Yes, but you would be the big man.

Unknown party.—Yes, that's it; and that is what puzzles me."

Conversation of March 20, 1916, between Potter and Drummond. Outside called 948 Flatbush:

"Dr. Potter.—Who is this?

Drummond.—Mr. Drummond.

Dr. Potter.—Hello, Walter.

Drummond.—Hello, Doctor, how are you? I would keep under cover, as they will get you. They want you and you know they will blame you for everything."

I have already read this. I won't go on with it.

Conversation of March 20, 1916, between a woman and Dr. Potter. Flatbush 948 called Plaza 631.

"Woman speaking.—Hello.

Dr. Potter.—Hello, this is Dr. Potter.

How do you do, Doctor.

Fine. Say, sister, did you get that pamphlet yesterday?

Yes, that is fine.

Dr. Potter.—Well, we sent out about 32,000.

Is that so?

Yes, we sent them to the Legislature, to the Governor, and to all the judges and all the big people that we could send them to.

That is fine. Only for you they wouldn't know what to do.

Dr. Potter.—No, they would have got away if it hadn't been for me.

I guess so.

Dr. Potter.—I just heard from Hebbard and he told me that he put them asleep. They didn't know what to do so they adjourned.

That is fine, Doctor.

Dr. Potter.—I have got to keep out of the way as they are looking for me. They want to find out just who was in the back of those pamphlets."

Conversation of March 21, 1916, between Dr. Potter and Father Dineen. Flatbush 948 called Madison Square 801:

"Dr. Potter.—Is Father Deneen there?

Father Deneen.—Hello, Doctor.

Dr. Potter.—What is new?

Father Dineen.—Have they served you with a process?

Dr. Potter.—No, there was nobody here, and there was nobody around here, either. Hebbard fears identification of his pamphlet, but no fear of that; he is incommunicado."

Senator Thompson.—What are those pamphlets?

A. Those were the libelous pamphlets circulated in large numbers all over the city of New York.

Q. What was libelous about them? A. If you read them there would be no doubt left in your mind. Would you like to see them?

Senator Thompson.—Yes. Did Father Farrell sign his name to them?

A. I will show you.

Mr. Moss.—Is that the pamphlet that Monsignor Dunn's statement in the papers takes responsibility for?

A. I didn't read it.

Q. I read a statement in the papers that he took responsibility for the publication of those pamphlets. If that is a libelous pamphlet, you will have his statement and you can lock him up for it. I would advise you to do it.

Senator Thompson.— Now that I see them, these were sent to me at Albany. I got copies of these two. I suppose every Senator did.

Mr. Moss.— And while you are speaking of pamphlets was there another pamphlet published during the investigation?

A. Besides these three?

Q. Yes, by other interests? A. One that was ascribed to the commissioner of charities.

Q. I have heard of it, but I never saw it. A. I have heard of it, but I have never seen it.

Q. If you are giving the Chairman some pamphlets, and you can give them the others — A. I will be glad to do so if I can obtain it.

Q. It is spoken of as the Morey pamphlet. A. I don't know it by that name. I have heard of a pamphlet which has been ascribed to the commissioner of charities.

Q. Was there anything libelous in that pamphlet? A. I don't know.

Senator Thompson.— Mr. Tully, you needn't answer if you don't want to. Does Father Farrell assume the authorship of these pamphlets?

A. He does assume it and has assumed it from the beginning, and his name is signed to the three of them, and those three were issued after an anonymous pamphlet which Commissioner Kingsbury had subscribed a hundred dollars to the expense of getting out was issued. The first pamphlet was made up solely of the headlines of newspapers, a picture of it you have before you; that is, with a picture of the child on, and the statement from the headline of a newspaper that children and pigs were fed out of the same dish. The testimony before the Strong Commission showed there was no justification for the headline or the statement.

Conversation of March 21st between Potter and Hebbard, from Flatbush 948.

Mr. Moss.— From whom did you get those identification numbers?

A. I think that they were prepared in the law department. That is my recollection. They were prepared for purposes of my testimony before the grand jury.

In this instance I can supply this information later by reference to the original, but, the identification number being wrong, I can't give you the telephone number that was calling.

It's a conversation of March 21, 1916, between Potter and Hebberd:

"Dr. Potter.—Hello.

Mr. Hebberd.—Hello, this is Hebberd. Are there any of my papers there?

Dr. Potter.—Not that I know of.

Mr. Hebberd.—Well, I advise you to get them out of there as soon as you can.

Dr. Potter.—I will do that as soon as I can.

Mr. Hebberd.—I don't think that they are following you.

Dr. Potter.—No, I don't think so.

Mr. Hebberd.—Well, if they did they would know where the pamphlets were printed, as you went there a good many times.

Dr. Potter.—No, not so many times. They used to send up to me."

Conversation of March 22, 1916, between Potter and Father Higgins. Flatbush 948 called Astoria 588:

"Dr. Potter.—Father Higgins?

Father Higgins.—Yes.

Dr. Potter.—What do you think about Folk's statement?

Father Higgins.—That is very bad for them.

Dr. Potter.—That is where the complainant appoints his own judge.

Father Higgins.—Yes.

Dr. Potter.—That ought to blow them up.

Father Higgins.—Yes.

Dr. Potter.—I think so.

Father Higgins.—Are you getting another pamphlet?

Dr. Potter.—Why, sure, when you get that stuff over to me.

Father Higgins.—To-morrow at three or four o'clock?"

Conversation of March 23, 1916, between Potter and person described as Monsignor. Outside wire called 948 Flatbush.

Mr. Moss.—Pardon me, will you repeat that number supposed to be Father Higgins?

A. As I find it here it is 588. I think it should be 558.

Q. Five hundred and fifty-eight, I am told, is correct. Your type must be wrong. A. I am giving you what I have, and it is here typed as 588.

Q. Either your type is wrong or else some imposter went in. A. You see these index numbers have not been checked, but only the body of the conversations for my purposes.

“Monsignor.—Anything new?

Dr. Potter.—They are still hunting for me with a subpoena.

Monsignor.—What do they want of you?

Dr. Potter.—I don't know, but I think it is for the State board matter. I think we had better get busy and get some kind of a four-page pamphlet saying all that we have said was fully proved.

Monsignor.—Well, we won't be able to have them before Sunday.

Dr. Potter.—Oh, yes, I am sending for the minutes which I expected here at eleven o'clock, because we can't go according to the newspapers. It is the minutes we have to go by.

“Monsignor.—I don't think the newspapers will bother with us. I don't think they will take any statement from us. I wrote about half a dozen statements to the newspapers; I wrote one to the World, one to the Sun, two to the Times, and I think I wrote one to the Evening Post the other night. I think we will be able to get some one or two of the newspapers to run our story. You know the Press is owned by some of them.

Dr. Potter.—We can try. If not, we will get that four-page leaflet.”

Conversation of March 20, 1916. Outside wire called Flatbush 948. Between an unknown person and Dr. Potter:

“Unknown Person.—The Governor made a statement.

Dr. Potter.—What was it?

Unknown Person.—Governor Whitman to-day reiterates his faith in the fairness and impartiality of the investigation of charitable institutions being conducted by Charles Strong, etc.

Dr. Potter.—That is an erratic statement of his.

Unknown Person.—He also said he received a number of letters that Commissioner Strong showed he was prejudiced against the Catholics and a number of letters that Commissioner Strong was not prejudiced against them, but if he was convinced that Commissioner Strong is or was prejudiced he would stop the investigation immediately, not to wait to write a letter, but his voice could be heard over the telephone in New York City.

Dr. Potter.—Well, you could convince him.

Unknown Person.—How will I do it?

Dr. Potter.—Tell him to look at paragraph so and so of yesterday's pamphlet, and then it will show the way Commissioner Strong is conducting the investigation, and that will convince him that Commissioner Strong is prejudiced. Send him a telegram or a night letter.

Unknown Person.—That is all right. I will do that. Good-bye."

This completes the list of conversations that I desire to place before this Committee to demonstrate the justification of the police department in supervising these wires, and the evidence of the conspiracy.

Senator Thompson.—As I understand this thing, Mr. Mayor, the question was over the circulation of these pamphlets. Was that the principal thing?

A. Oh, no.

Senator Thompson.—Well, what was it they wanted Potter for? As I understood this, there was to be somebody by the name of Potter that thought he was going to be subpoenaed. He was to be a witness, or he thought he was to be a witness for somebody. Do you know what he was to be a witness for?

A. He was desired as a witness in the investigation before Charles H. Strong as a commissioner appointed by Governor Whitman to investigate the State Board of Charities, appointed under the Moreland Act.

Senator Thompson.—What was it they were after, as to who wrote these pamphlets?



A. I am sure I don't know what they wanted him for. I was in very little touch with the conduct of that investigation as they proceeded. I knew generally from time to time what the Commissioner reported.

Senator Thompson.—These conversations were taken every day by the police?

A. During the days when so recorded.

Senator Thompson.—That is, those days you have mentioned?

A. And for other days that were not recorded in what I have stated to-day.

Senator Thompson.—And the conversations were given to the police?

A. They were taken by the police.

Senator Thompson.—What did they do with them?

A. They turned them over to the Commissioner, I am informed.

Senator Thompson.—What did he do with them?

A. He has the originals in his possession. Later he gave me this series of copies.

Senator Thompson.—Did he do anything else with them?

A. My understanding is that some copies were placed in the possession of the special assistant corporation counsel for the purpose —

Senator Thompson.—That is, Mr. Hotchkiss?

A. Yes, Mr. Hotchkiss—for the purpose of concluding the evidence of the commission of these crimes.

Senator Thompson.—What did the police commissioner want them for?

A. In order to obtain the evidence of the commission of the crime of perjury, criminal libel, conspiracy to pervert justice and obstruct the due administration of the law.

Senator Thompson.—How did he know that they were going to commit all those crimes?

A. Because, as I testified yesterday, the assistant corporation counsel informed me that he had substantial ground for believing

that these crimes had either been committed, were in process of commission or were in contemplation of commission.

Senator Thompson.—What was his ground for believing that they were going to give somebody a hundred dollars or fifty dollars?

A. I didn't say that I believed that specific thing.

Senator Thompson.—What other crime is there there?

A. What other crime, Senator?

Senator Thompson.—Yes.

A. The crime of conspiracy to obstruct the due administration of the law, which is a well-recognized crime and described in, I think it is — I can't quote the section, 549, or something like that, of the Penal Law.

Senator Thompson.—Well, their conspiracy was opened in the publication of those pamphlets?

A. That constituted only a part of it.

Senator Thompson.—And the keeping away of Potter?

A. That, too, was a part of it.

Senator Thompson.—And permitting Potter to keep possession of his own books and papers.

A. Well —

Senator Thompson.—What I am getting at is this: Of course, after you have taken these conversations, you can hindsee. Up the State, instead of saying "foresee," they say you can hindsee much better than you can foresee. But, could you hardly foresee that any of these things would occur? Or could the police commissioner foresee that?

A. God knows I never foresaw that any Catholic priests in this city would give a witness a hundred dollars to abscond the jurisdiction —

Senator Thompson.—What I was getting at — the police commissioner made those taps for some purpose?

A. For the purpose of obtaining evidence, first, of the crime of perjury; second, of the crime of conspiracy to utter a criminal

libel; third, of the crime of conspiracy to pervert and obstruct justice and the due administration of the laws.

Senator Thompson.—Perjury about what?

A. I explained that yesterday. Mr. Hotchkiss stated to me that on the 16th day of March Hebbard, as a witness before the Strong Commission, had committed perjury in several respects, among others, by allegations that he was not on familiar terms with Potter and had not been in communication with him. The record will contain those statements.

Senator Thompson.—Was that a material fact in that investigation?

A. Entirely, as I understood it.

Senator Thompson.—The police commissioner, then, as I understand it, did not have a subpoena to serve on Potter?

A. No.

Mr. Moss.—Was never served?

A. I couldn't tell you, but I have been informed that during these days process had been issued by Commissioner Strong and that an attempt was being made to serve him. I do not know that of my own knowledge.

Senator Thompson.—You don't know whether they served him or not?

Mayor Mitchel.—I know that he at some stage of the proceedings appeared as a witness, I think under service, but I don't know that definitely.

Q. Do you know whether he went away or not? A. Yes, I understand that he did. I have been informed that he absconded.

Q. How long? A. For a number of days.

Q. How many? A. That I couldn't tell you.

Q. Somebody says two days. I had that information. A. I can't tell you the number of days. I haven't taken up those facts. They will be presented when this matter is brought up properly in the criminal courts.

Q. He stayed in Philadelphia two days—he probably ought to be sent somewhere and punished for that.

Mr. Moss.— What does he mean by absconded? How do you apply it? How do you say that Dr. Potter absconded?

A. I am using it in the general intent and meaning of the word in the English language; merely that he removed himself from the jurisdiction of the Governor's commissioner in order to avoid appearing before him as a witness, as is evidenced by his own stated intention to do so in these conversations.

Q. Was it intended that some of these copies should be used in the Strong Investigation in the examination of witnesses? A. What do you mean?

Q. Some of the copies of these conversations — was it intended that they should be used? A. It was certainly not intended when they were taken.

Q. But at the time that they were given to Mr. Hotchkiss? A. It was intended through the use, the examination of witnesses, the complete evidence, the additional evidence of the commission of perjury and the other crimes would be secured in order that the police department might go forward with its prosecution.

Q. It was intended that Mr. Hotchkiss might use those for those purposes? A. That is my understanding.

Q. Did you advise the police commissioner about the taking of these conversations? A. No.

Q. Did he tell you he was doing it? A. I told you of my conversation with the police commissioner, which occurred on the night of March 16. That is on the record of yesterday's hearing. That was the only one so far as I recollect that I had with him on the subject.

Q. Did you know that this was being done before the process was completed? A. Did I know what was being done?

Q. Did you know that the police were listening-in on wires and taking conversations from these three wires that you have detailed, before that process was completed? A. Oh, yes.

Q. Did you ever give any direction to Mr. Woods or any police official in connection with the listening-in on those wires or the taking of these conversations? A. No.

Senator Foley.— I wondered, Mr. Mayor, why the police didn't inform the process servers of Commissioner Strong of the location of Mr. Potter for those ten or fifteen days that they were looking

for him as a witness, and wasn't it their duty as police officers to so inform Commissioner Strong?

A. I don't know that they did not. They probably did. I have been informed since all this happened that the process servers—it is my recollection I have been informed, I am a little hazy about it—sought for him at that address. I know that it was the belief of the people engaged in the charities investigation that he was hiding in his house.

Q. It came out during that time, according to these conversations? A. I think you will find, if you read those conversations carefully in the record, that he didn't come out except at night or by stealth.

Q. When this conversation took place as to the hundred-dollar payment that you say indicated to your mind the commission of a crime? A. Surely.

Q. Did the police commissioner take any action on that report? A. He has been taking action on it pretty constantly ever since.

Q. I mean any official action, I don't mean in his mind? A. It depends upon what you call official.

Q. Did he apply for a warrant, that is all? A. He has been engaged in an effort to complete the criminal case which is established by that evidence.

Q. And did he attempt to arrest the messenger with the money? A. You will have to ask him that. I don't know.

Mr. Moss.—Those conversations all ended in March, didn't they?

A. I think they did, Mr. Moss.

Q. So the police commissioner and you have had since that time to institute criminal proceedings? A. I think you will find out that we have not been inactive in that matter.

Senator Thompson.—Is there any other evidence of this crime, except these conversations, that you know of?

A. All of the conversations I have given you, those that I desire to call to your attention.

Q. Is there any other evidence? A. There is extraneous evidence.

Q. What I am getting at is the justification for tapping. That is the reason I asked you the questions. It isn't because I want to get into this controversy. A. I imagine it is just as disagreeable to you as it is to me.

Q. I don't think it is up to us to try this thing at all, and I am perfectly frank to say so, but in as much as it is here, let us get what we can out of it from the question of justifying the miscellaneous tapping of telephones. A. There never has been miscellaneous tapping.

Q. Mr. Potter says in one case "they may get a search warrant." They couldn't have gotten a search warrant except they applied to a magistrate. A. That just shows Potter's ignorance.

Q. That shows me that perhaps he knew that these telephone conversations were being taken and that might be probably cause for a search warrant. Do you think there was anything to that? A. You ask me? I do not.

Mr. Moss.—Do you know whether they planted you, Mr. Mayor?

A. If any reasonable, rational man thinks that that series of conversations was a plant, I leave him to his own judgments and illusions.

Q. For instance, that matter of a hundred dollars? A. I knew quite a number of days ago that that was to be the excuse concocted.

Q. But I wanted to ask you this, while there is a lull. A. But you and I can look each other in the eye and wonder whether anybody would believe it.

Q. I am only asking you. A. I don't. You ask me if I believe that—I don't.

Q. Did Mr. Potter appear in the Strong Investigation and demand to be heard as a witness without having been subpoenaed? A. I don't know. Do you know that he did?

Mr. Hardy.—He did appear later on.

Senator Thompson.—This investigation is just like this. It isn't like a case in court, you have got to try it to-day. The investigation is going right along, just the same as this Committee. It is still going on, isn't it?

Mayor Mitchel.— I understand the hearings have been closed.

Q. They could open them again if they wanted to? A. I suppose he has power to open the hearings any time before his *functus*.

Q. He will last just as long as the Governor who appointed him. A. Until he surrenders his commission, although I don't think his life is perpetual.

Q. It is probably for two years more from next January.

We may want to ask you another question on this; if we do, will you come back sometime when you have time? A. Of course.

Senator Thompson.— I think that it is my duty to state that if anybody whose name has been mentioned in these conversations is desirous to be heard before this Committee, I think we will sit, and it is our duty to sit and hear them if they want to come. We are not going to send for them, except to have them understand that if they want to come, we will be glad to give them the same courtesy that we gave the mayor.

Mr. Moss.— Do you think that the police officers who took these conversations ought to be examined in order to determine how it is done?

Senator Thompson.— I will leave that to you.

Mr. Moss.— I think they should be.

Adjourned until 11 o'clock Thursday morning.

Adjourned to May 25.

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### MAY 25, 1916.

The meeting was called to order at 1.00 P. M. Senator Thompson presiding.

Senator Thompson.— The Committee's attitude was expressed last night that, inasmuch as the mayor's statement was taken, the Committee felt it their duty to listen to statements of any one mentioned in the statement of the mayor and I assume Mr. Tully

represents some people that have been mentioned in this connection; and I think that in this matter, so far as this subject is concerned, that it is right to allow Mr. Tully to sit at the counsels' bench.

Mr. Tully.—I consider it a great privilege to sit at the counsels' bench of this Committee on this occasion. I would consider it a privilege on any occasion.

I would like to say, Senator Thompson and members of the Committee, that a week or ten days ago, when the public became fully acquainted with the activities of the mayor with relation to eavesdropping and spying upon telephone wires, the mayor characterized those who opposed him and his ideas as "traitors." Within the last two days, it appearing to us that the cry which he raised met with very little public support, he changed the word "traitors" to "conspirators." Yesterday detailed statements were made of alleged conversations had between certain of these gentlemen who bore unblemished reputations in this city, occupied places of dignity and honor in their churches. Although we were unable to obtain the minutes of yesterday's hearing until this morning, nevertheless, these gentlemen whose characters have been assailed have availed themselves of the opportunity presented by this Committee to come here to-day, and within the limited time that has been at their disposal to make replies to the suggestions and the innuendoes and the charges that were made yesterday against them.

I will ask the Committee to hear Monsignor Dunn, the chancellor of the Catholic archdiocese of New York City.

Senator Thompson.—I want to call your attention to the fact that we want to accord the same privilege to these gentlemen that was accorded the mayor. You remember the police commissioner's statement was made and we took it, without he being sworn. He asked the mayor if he desired to be sworn and he said he did, so he was sworn; and we asked him to waive the immunity and he refused. Whether that same course should be followed here, I don't know.

Monsignor Dunn.—As you like.



Monsignor Jno. J. Dunn.—I waive all immunity. I simply want to be treated as a citizen. (Witness is sworn.)

Mr. Moss.—I want to ask you a few preliminary questions before you begin your statement, so the record may show who you are.

Q. (By Mr. Moss).—What is your position in the church?

A. Chancellor of the archdiocese of New York.

Q. Now, will you please state the functions of that office? A. The chancery office controls all—I might call it all the temporalities of the church. That does not exclude, however, the spiritual direction of the parishes, and control of the priests working in the service of the people of these parishes. It might be called the clearing house of the archdiocese of New York. Through it everything passes of any account of any gravity. It is, you might say, the executive department of his eminence, the cardinal archbishop.

Q. And how much territory does it cover? A. The archdiocese of New York extends from Saugerties to the end of Staten Island.

Q. And you have charge of that office? A. I have.

Q. You are the responsible head of it? A. I am.

Q. And as such you are in constant communication with the cardinal, I take it? A. I am.

Q. How long have you held that position? A. Going on two years.

Q. How long have you been a priest in the church? A. Twenty-one years.

Q. Where have you been in service outside of the city of New York? A. I was never in service in any other parish but the parish in which I am at present.

Q. Then you are a New Yorker? A. I am a born and bred New Yorker.

Q. Do you know New York through and through? A. Yes, sir, I know through and through.

Q. Do the charities of the church come under your observation? A. Not directly. Do you mean under my control?

Q. Yes. A. Not under my control, no. We have a supervisor of charities who has to do entirely with every branch of that service of the church.

Q. Does he report to you? A. No, he does not. He reports directly to his eminence.

Q. Do you have anything to do with it? A. I do indirectly. I receive reports of the different institutions. I sometimes have occasion to visit the institutions. I have communications regularly from those in charge of these institutions. You might say that no department or activity of these charitable institutions would not in some way come under the control of the chancery office.

Q. Then, you know the charitable conditions and the charity needs of the city of New York? A. I do.

Q. And you know as well as any one, no doubt, how the various charitable institutions of the church are meeting the demands upon them, and in what way they meet these demands? A. I do.

Q. If there is any man that can talk about that situation with confidence over a period of years, I should say it would be yourself? A. I think so.

Q. Now, I understand you have a statement that you have prepared. We would like to have it. (Statement read.)

It is amusing to those who know Mr. Mitchel's church affiliations to read his reference to his co-religionists. One would rather think that he had not been correctly quoted. He does, however, show a religious touch which is almost pathetic, when he refers to the "altar of the church" and draws therefrom a valuable lesson. He pledges himself to keep the church from laying its hands on the altar of the government, though he has been for some time past adroitly making a counter-attack, and was meeting with a measure of success. Perhaps he would have succeeded fully in his holy purpose of taking God out of the hearts of the little ones in our institutions had he worked with a little less speed and ardor, but that is another story.

The Catholic church is not on trial, though Mr. Mitchel is trying very determinedly to shift the issue that way. The charities investigation was conducted by Commissioner Strong and the result will be given later. The public can afford to wait, and in the meantime Mr. Mitchel should also be willing to rest his case until the findings are given by the proper tribunal.

The only conspiracy thus far uncovered is the one in which he figured so prominently, and in those interests he labored so untiringly and lawlessly. He was attacked ruthlessly the work of our sisterhoods and dragged the dead from the grave in his Berserker rage, in an attempt to justify his ignoble conduct.

"Honest investigation," Bishop Burgess of Long Island told his Episcopalian brethren at their Synod, "has no need to resort to dishonest and unworthy methods of getting information." Our homes stand open to all; our books can be examined at any time and our children can be seen. Mr. Mitchel and his associates, however, did not think so, and acted by fair means and foul, principally the latter, to besmirch all institutions, Catholic, Protestant and Jewish. Yet Mr. Mitchel speaks of religion.

The issue now is not the charities,—but wire-tapping in which he acknowledges he has played the main part. The present investigation is concerned with that and nothing else. All the skillfully laid plans to divert attention will not succeed, and whatever charges Mr. Mitchel has to make will be taken up in the proper forum. This will no doubt be done later, when his charity commissioner and his special corporation counsel now under indictment, are brought to trial.

Some time later, when he weighs his intemperate language and considers the odium he has brought on his community by his conduct, he will, no doubt, regret his ill-advised effort to besmirch the characters of unselfish men and women, who have contributed to the care of the unfortunate and friendless service that money cannot purchase. Religious motives may have inspired his noble purpose of violent attack on the private institutions, but how will he explain his wire-tapping?

The phonograms submitted by Mr. Mitchel and which he seems to think important were in the hands of himself and his confederates for some weeks. Wonderful changes have evidently taken place. I speak of my own supposed conversation, and I am justified in drawing conclusions about the others. If a man will tap a wire to make his case, he will not hesitate to garble and distort sentences, reading into them the meaning he desires.

The grand jury of Brooklyn had all this information now supplied to the Thompson Committee, and they had the elaborated

account of Mr. Mitchel to shed full light on any doubtful question. The mayor explained everything to his own satisfaction, and yet the grand jury indicted his Mr. Kingsbury and Mr. Hotchkiss. Is it not passing strange that the jury could not see the conspiracy eye to eye with Mr. Mitchel, and arrive at his conclusions? Surely these men were lacking in intelligence, not to speak of justice, in not agreeing with the virtuous mayor! The latter has ideals, while these gentlemen of the jury had plain everyday common sense and hence returned their verdict.

The presentment accompanying it states: "If, as does appear, they — the mayor and the police commissioner — aided and abetted in the crimes charged — the conduct of the mayor and the police commissioner merits the most severe condemnation." This carries the answer to Mr. Mitchel's charges, and further comment is unnecessary.

Mr. Moss.— Now, Monsignor Dunn, the statement went across this table very straight and very clear that you, being named by your own name, and your associates were conspirators together to obstruct justice, to interfere with the good efforts of the city administration and to ruin the charities commissioner, and, incidentally, the mayor's administration. I want to ask you when you first met Father Farrell?

A. (By Monsignor Dunn).— Well, I may say that I didn't meet Father Farrell up to the time that I met him at the funeral of Mulry in St. Patrick's Cathedral on Madison avenue or Fifth avenue. I did have a conversation with him over the phone about some matters which I perhaps will explain later if I am given the privilege, and up to that time I had never heard of Father Farrell. I know something of his work in Brooklyn. I knew that he was identified with Catholic charities. Sometimes I think that we here in New York are rather provincial. I may explain that by saying that I have been in Brooklyn — I suppose the Brooklynites will pardon me — a dozen times in my life outside of the times I visited the Calvary cemetery. I, however, called Father Farrell upon the phone and I asked the privilege of publishing some material he had gathered.

Q. When was that? A. That was on February 28, Monday night.

Q. Yes, but to come in contact with him and to know him, to know his visage, his features, as I understand you, that didn't occur till after the testimony had been given in the Strong investigation A. No, that isn't true.

Q. When did you first meet him to know him? A. Father Farrell was called down to the Strong investigation on the day that Mr. Mulry was buried. Now, I don't recollect that date, but I remember him coming into the sacristy and I walked up to him, and from the descriptions I presumed that it was Father Farrell.

Q. Well, you had never seen him before that day? A. No.

Q. And you identified the date as that of Mulry's death, or rather, his funeral. That, I am told, was the 13th day of March. If this alleged conspiracy existed, it must have been sometime previous? The mayor said there was a conspiracy. A. That is right. This alleged conspiracy, if it existed, existed a good while before that.

Q. Now, Monsignor, the mayor charged that there had been a conspiracy extending practically throughout his administration, coming up in various ways, for the particular purpose of ruining the charities administration and hurting his administration through that department. What do you say about that? A. I have absolutely no knowledge of that. I may add, however, that there has been nothing of that kind, as far as I know, and my knowledge covers a pretty wide area. There has never been a suspicion of any antagonism to Mayor Mitchel and his administration, except where a department of his administration entered into the spiritual life of the children of the Catholic church.

Q. I wish you would make that clear. A little while ago you spoke of some effort to take God out of the hearts of the little children as something that you had noticed. I wish, in view of what you have just said, you would make that clear. A. May I explain from the beginning? I will try not to be very long.

Q. We might as well understand what the truth of this trouble is. A. In the chancery office we always have a number of visitors. They come for any and every reason. People connected with every phase of the Catholic church and Catholic activity come there to have doubts cleared up, to make applications for one thing

or another thing. The charities investigation had been going on for some time, and we discovered very early in the proceedings that the Strong Committee was not an unbiased and unprejudiced tribunal, but we kept quiet. To those that came to me, I said, "Well, now, be at ease for a time. Things will clear up. Time heals everything and we need not defend our people nor our sisters and the work they have done, and therefore be patient." It was not until Monday, February 28th, the noon mail, that I received the scurrilous, malicious pamphlet of Mr. Morse, who was hand in glove with Mr. Kingsbury, the commissioner of charities, and who published it anonymously — it was not until I received that that I determined to do something to enlighten our own people. When I say "our own people" I mean Catholic people.

Q. That was a paper — you have it in your hand — made up largely of the headlines of newspapers calculated to show that charity institutions in general were neglecting the poor? A. Exactly.

Q. And showing alleged intolerable conditions such as the mayor described yesterday? A. Exactly.

Q. When he spoke of children with their hair matted with lice? A. Which he knew wasn't true, and if he didn't know he should have known.

Q. Well, now, you say that anonymous pamphlet was circulated, and I think you were saying that in order to meet that, you determined, or somebody determined, to issue a pamphlet to your own church people so that they might not be disturbed; many of them having friends and relatives in these institutions? A. Exactly! And I am the man that started the distribution of the pamphlets, and if such a crisis should ever arise again, I shall pursue the same methods and feel fully justified. And I would be acting against my conscience if I did not so act.

Q. Now, I am going to ask you as a man whose business it is to know, not only by your duty but by the sacred necessities of your duty, the conditions of your institutions and the condition of its wards, a few questions. The mayor is charged with the duty, as an official to know something about the institutions where city money goes. The statement by the mayor was very definite and

many people have taken it as applying generally to your institutions when he spoke of such neglect, as was evidenced by children with their hair matted with lice and hands covered with sores. Now, what do you say about that as a condition in your institution? A. You must understand that the children brought to our institutions and every institution to which the city is contributing money for the support of the wards of the city come from the lowliest families in the community. They come from the poor and the wretched.

Q. I suppose many of them are from no families at all? A. And if that was not so, they would not be in the institutions.

Q. Committed by magistrates? A. Committed through the charities department by magistrates, yes. Now, it is unbelievable to think that some of the conditions described by the mayor could not exist temporarily. How are you going to clear up a condition in a day or week, sometimes perhaps for a month, sometimes perhaps for longer.

Q. Some child that is diseased and has come out of diseased conditions? A. It just comes to me now, a child troubled with ringworm, as you know, that can not be cleared up in any specific time; at least as far as my knowledge goes. There are other conditions of that kind that have to be safeguarded and looked after and cared for. That all takes time. But to hang a charge upon that detail, when the sisters or those in charge of non-Catholic and Jewish institutions are trying their very best to care for the wards of the city, to my mind, is a vile calumny, and any one who issued it should have known better.

Q. Do you, as an administrator of these charities, believe that the sisters in charge of these institutions are human persons or do you believe that they are inhuman? A. Well, the history of our sisters needs no defense whatever.

Q. I go into these details and I stop where I have because they were specifically mentioned by the mayor, and I happen to have met a good many people who have come to me with tears in their eyes as they have sorrowed over the condition of the children in your institutions, and I thought knowing by personal contact what impression has been produced by his honor's words that you should have the opportunity to address yourself directly on that point.

A. I have asked to come here this morning before this Commission to answer promptly the mayor's charges. I do not say it was his purpose to stampede this community and to utter vile calumnies, but he is certainly not above suspicion. He has made statements that he knows to be untrue, and I repeat again, if he does not know them to be untrue, that he should have.

Q. Are you aware of any movement in the city what has for its object the disrupting of these child-caring institutions? A. Why, it is an open secret that the charities trust as it is called, supported by the Standard Oil and the Russell Sage Foundation, in its private activities dealing with charities, have one and only one aim, and that is the secularization of all institutions. That will explain the sentence which I read in my statement, the attempt to take God out of the hears of our little ones, for which we will not stand.

Q. Well, do you believe it is important that the children of this city and especially those that come out of bad conditions, in the tender years of their lives should be instructed in the faith of their fathers, whether it be Jewish, Catholic or Protestant? A. I certainly do, and the man who denies that, moreover, denies that a child can be trained without any helpful, wholesale influences, is a man that has not studied present day conditions. He can not.

Q. Well now, Monsignor, the mayor mentioned your name specifically a number of times and quoted, not by personal knowledge but by certain alleged telephonic conversations between you and other persons, and carried in the first day's proceedings a direct accusation that you had paid or offered, I have forgotten which, either paid or offered one hundred dollars to one Daniel C. Potter to remain out of the jurisdiction of the Strong Investigation. Now, I will give you the conversation. It is alleged to have occurred on the 24th of March, 1916, and I quote it. The mayor's words in reading are these:

"Outside call 408 Flatbush, conversation of March 24, 1916, between Monsignor Dunn and Mr. Potter:

' Mgr. Dunn.—Hello, is this Mgr. Dunn?

Dr. Potter.—Hello, Mgr. Dunn.

Mgr. Dunn.—He is going to see the cardinal and is likely to stay there all afternoon, so I don't think I can see him before night.



Dr. Potter.— Well, you see, they are liable to get out a search warrant and come and get me, and if I leave the state. You know, you can't choose your place now.

Mgr. Dunn.— Well, I will tell you what I will do. I will give you \$100. Can you send someone up for it?

Dr. Potter.— Yes, I guess so. Where will I send for it?

Mgr. Dunn.— Up at the chancery.

Dr. Potter.— I thought you closed this afternoon.

Mgr. Dunn.— Yes, but I will keep the door open and I will have it in an envelope sealed. Now, don't forget to send someone over here and I will have that in a sealed envelope.' ”

Now, did you engage in a conversation with Dr. Potter such as this?

A. Yes.

Q. Did you have a conversation on that date? A. I did on that date.

Q. State what it was? A. He called up Dr. Potter to apprise him of the fact that he could see a person whom he desired to see, who was away at the time. I learned when the engagement could be made and I called up Dr. Potter and I gave the information which is contained in the first part of that phonogram. Dr. Potter then told me that he was going out of town. I said, “How long will you be away?” He said, “Forty-eight hours.” It came to me like an inspiration, I was waiting for an opportunity and I said to him, “Will I send you a hundred?” I did not mention dollars, though that's the implication, one hundred. He said, “No, I do not want it.” That is the entire conversation held that day.

Now, I may explain that conversation by saying that was on Friday and I waited expectantly all Saturday at the chancery office. I was up through the building off and on, and on my return I was told that some strangers had been there looking for me but would not leave any message.

I went home that afternoon and as I am not a well man I did not return until late. I was told that two or three mysterious strangers had been around again looking for Monsignor Dunn, but would leave no message. I knew as if I had already been served what the meaning of it all was. On Monday I was undisturbed,

strange to say, all morning in the chancery office. I was not trying to evade any process of law. In the afternoon I went home and after luncheon returned to my office and returned about six o'clock that night for a tea, and as I sat down to the table I heard the bell ring and the maid go to the door and a voice say, "Is Monsignor Dunn in?" and she said "Yes." "And is Monsignor Flood at home?" "Yes." "Could I see them?" I walked out immediately and said to the process server, for it was the process server, "This is rather an unexpected measure." He said, "Father, I am sorry, but I have come to serve you with a subpoena." "You need not worry at all, I have been expecting it all day, when am I going before the Strong Committee," he said "To-morrow morning," which I did accordingly.

Now, that explains the entire conversation and every thing that led up to my appearance at the Strong Committee, and the fact that I knew that our wires were covered.

Q. I did not get your explanation at first, I see it now. You knew your wires had been tapped? A. I simply threw the bait which they grabbed as a fish will rise to bait.

Q. That is, you believed your wires were covered and in order to get a line upon it, so to speak, you put this one hundred remark into the conversation? A. I knew that they would fall for that and they did.

Q. And then they subpoenaed you? A. They did.

Q. Which to your mind proved that you expected that the wires had been tapped? A. The question was thrown at me when I was on the stand. "Why did you put \$100 in an envelope for Dr. Potter?"

Q. Well, at that time were you endeavoring to get evidence to prove the listening-in? A. I was not making any effort, no.

Q. At that moment when you put in the \$100. A. At that moment I was, positively.

Q. What day was that, Monsignor?

Mr. Moss.—The conversation was on March 24th.

Q. You were put on the stand? A. On Tuesday?

Q. The following Tuesday? A. Yes, they were looking for me on Saturday. I do not know why they could not find me,

they were looking for me on Monday and got me on Monday and I appeared Tuesday morning at their request.

Mr. Moss.— Had Potter said anything or had you learned anything from Potter as to rumors that the wires were tapped? A. Had I learned anything? Not a word from Dr. Potter.

Q. From anyone else? A. No, not from anybody else.

Mr. Moss.— Mr. Chairman, I made a statement or expressed an idea during my examination of the mayor yesterday which has been very largely reported in the newspapers, in some of them in the correct connection, and I have heard from several quarters that the context is not being understood. The application of my remark was clouded and I think that it is important enough to correct such misunderstanding as this may be. When I said to the mayor, that if the things which he stated were true, he ought to proceed and arrest the priests whom he charged, proceeded against them criminally, I was not referring to the alleged telephonic communications, which, as I recall it, had not then been given by the mayor. I had no idea of what he would say about telephonic communications, but I had reference to his very distinct and positive charge that these men had engaged in a conspiracy to thwart justice and to overturn his administration. You remember his remarks?

Senator Thompson.— Yes.

Mr. Moss.— I addressed myself to that. If he had proof that these men had engaged in a conspiracy contrary to the law of the State he should take his case to a criminal court, but I am free to say that as a matter of law, after reading over the telephone conversations, I think he would have a hard job to make out a case on them alone.

Q. Did you ever give Dr. Potter \$100? A. I never gave Dr. Potter \$100 before the alleged occasion, on that occasion or since.

Q. Or any money? A. Not a dollar.

Q. He never asked for any? A. He never asked me.

Adjournment until 2.45.

Thursday, May 5, 1916.

The meeting was called to order at 3 P. M., Senator Thompson presiding.

MONSIGNOR JOHN J. DUNN:

Examination by Alfred J. Tully:

Q. After your talk on the 24th of March with Dr. Potter, did you have a subsequent conversation with him with reference to that talk? A. Dr. Potter had gone away, as he told me he was going for forty-eight hours. I think about a week after that he returned, perhaps it was ten days, I don't recall. The first thing he said to me, almost the first thing he said to me was, "Why did you mention a hundred dollars to me?" "Why, I said, it was simply to get a bait thrown which would be grabbed immediately, and it happened."

Q. Did you tell him how it had worked? A. I told him I had been subpoenaed to the Strong Commission.

Q. Did you have any suspicion on the 24th of March or any time prior to that that your wires were being tapped? A. I had a suspicion as early as March 12th, and on the 15th or 16th, I don't know which, I spoke to Dr. Higgins about it. He said that without any question our wires were tapped. He said that if they weren't they would be, because this was an administration affair.

Q. Who is this Dr. Higgins. A. He is the Catholic supervisor of charities of Brooklyn.

Q. Did Dr. Potter in that conversation say anything to you in substance or effect like this: "Well, I suppose we will have to wait. I heard from Farrell and he says that Higgins advises me to leave the State and get out of the way." A. Absolutely no!

Mr. Moss.—I am quoting in my question from the statement read by the mayor yesterday, which is the alleged conversation between you and Dr. Potter. Was there anything said by Dr. Potter as quoted by the mayor (referring to the chancery office): "I thought you closed this afternoon."

A. No.

Q. Do you know on what day of the week March 24th was?  
A. I can't recall that exactly, but I think it was Friday.

Q. The chancery office keeps open all Friday afternoon, doesn't it?  
A. All Friday afternoon — never closes on Friday in the afternoon.

Senator Thompson.— March 24th was Friday.

Q. Was anything said by you to this effect (I am quoting from the mayor's statement): "Yes, but I will keep the door open and I will have it in an envelope. Now don't forget to send some one over, and I will have that in a sealed envelope." A. I had no necessity for making any statement of the kind, because the chancery office was always open.

Q. Was any such statement made? A. No, sir.

Q. Can you conceive how a man would forget how to go after his hundred, if he is going to get it?

I believe that's an old police custom, to receive money in sealed envelopes. It seems to carry me back to old days.

Mr. Tully.— The mayor read this as an alleged conversation between you and Dr. Potter:

"Potter.— Hello, is Mon. Dunn there?

Dunn.— Who is this?

Potter.— Dr. Potter.

Dunn.— Good morning; anything new?

Potter.— Yes, there is a lot of new things.

Dunn.— Is that so; what's new?

Potter.— Well, Homer Folk is going to Albany.

Dunn.— Are you sure of that?

Potter.— Yes, a friend of mine saw him buy a ticket.

Dunn.— Well, what do you think he is going there for?

Potter.— Well, he is going up to see the Governor.

Dunn.— Well, what can we do?

Potter.— Keep on hammering at them.

Dunn.— In what way, with a new pamphlet?

Potter.— Why no, we ought to pay for a column in the newspapers. Yes, you know I never could persuade Murray to do anything. I told him they were a lot of crooks and to go right at them, but he says he can handle them. You know I don't

want to be the goat like in 1910 when I was the goat, and I was the goat for six years.

Dunn.—Well, you won't be the goat this time; we will make a sheep of you.

Potter.—All right, then, I'll be the sheep.

Dunn.—I will go right up to Twenty-ninth street and see what he says about it.

Potter.—I'll tell you what I would like to do. I would like to take a run over to see you to-night after dark.

Dunn.—Well, you had better not; they will serve you with a subpoena.

Potter.—I ain't afraid. They can't get me. I can get out two different ways and if I once get a start they'll never get me.

Dunn.—All right, I will call up Twenty-ninth street and I'll call you later."

Now, this purports to come from Flatbush 948 to Plaza 4311, the office of the chancellor, isn't it?

A. Yes, sir.

Q. And the chancery office is situated where? A. Fifty-first street and Madison avenue.

Mr. Moss.—That's behind the cathedral?

A. It is.

Mr. Moss.—Alongside of it, I should say.

A. Yes, sir.

Q. (By Mr. Tully).—Did you say then, "I will go right up to Twenty-ninth street and see what he says about it," if you were talking from Fifty-first street and Madison avenue?

A. Well, it isn't likely I would say I was going up when I intended to go down.

Q. Did you say it? A. I did not.

Q. Now, do you know any Murray that was referred to in that conversation? A. I do not.

Q. Have you any idea of anybody by that name who could have been referred to by you? A. I do not know.

Q. Did you mention anybody named Murray, or say that you never could persuade him? A. I did not.

Q. Did you ever say that you told him, whoever Murray is, that they were a lot of crooks and to get right at them? A. I don't use such language.

Q. Did you say it? A. I did not.

Q. Did Dr. Potter say anything to you in that conversation about Homer Folks going to Albany? A. He did not.

Q. Did he say anything about seeing a friend or having a friend of his tell him he had seen Homer Folks buy a ticket? A. No, I don't see that Homer Folks would have any interest in me in any way.

Q. Then the conversation as reported by the mayor did not take place? A. It did not take place.

Q. (By Mr. Moss).—Is Dr. Potter in the habit of saying "ain't?"

A. Well, those who know Dr. Potter know that he at least uses grammatical English.

Q. (By Mr. Tully).—Did Dr. Potter say to you that he could get out two different ways and that if he once got a start they would never get him?

A. He did not.

Q. Anything in substance or effect like that? A. Nothing like it — nothing.

Q. Now, I will call your attention to an alleged conversation recited by the mayor as having happened on the 23d of March: an outside wire calling 948 Flatbush, the names given being Dr. Potter and one Monsignor. Did you ever call up Dr. Potter from an outside wire? A. I did not. I used my own wire always in communicating with Dr. Potter — always.

Q. The mayor reported this as a conversation purporting apparently to be between you and Dr. Potter:

" Monsignor.— Anything new?

Dr. Potter.— They are still hunting for me with a subpoena.

Monsignor.— What do they want of you?

Potter.— I don't know, but I think it is for the publication of the State board matter. I think we had better get busy and get some kind of a four-page pamphlet stating all that we have said was fully proved.

Monsignor.— Well, we won't be able to have them before Sunday.

Dr. Potter.— Oh, yes; I am sending for the minutes, which I expected here at 11 o'clock, because we can't go according to the newspapers, it's the minutes we have to go by.

Monsignor.—I don't think the newspapers will bother with us. I don't think they will take any statements from us. I wrote about one-half dozen of letters to the newspapers. I wrote two to The World, one to The Times, one to The Sun, and I think two more to The World and the Evening Post the other night.

Dr. Potter.—I think we will be able to get one or two of the newspapers to accept. You know the press is owned by all these people.

Monsignor.—We can try.

Dr. Potter.—If not we will get that four-page leaflet."

Did you ever write a half dozen statements to the newspapers?

A. I did not.

Q. Did you ever write one to The World or one to The Sun, two to The Times, or one to the Evening Post? A. I did not.

Q. Did you ever write any letters during this investigation by the Strong Committee to any of the newspapers? A. I wrote one letter last week to the New York Times — no, three weeks ago, to the New York Times, which they did not publish.

Q. Did you write any letter to the newspapers prior to the date of this alleged conversation, which was on March 23d? A. I did not.

Q. Did the conversation as given by the mayor, apparently between you and Dr. Potter, ever take place? A. Not as far as I am concerned. I am not the monsignor.

Q. You are not the monsignor referred to? A. No, sir.

Q. Have you any idea who is the monsignor? A. I don't know. I couldn't think. I am the prominent one just now.

Q. Now, a conversation was reported from an outside wire to Flatbush between an unknown person and Dr. Potter, in which the unknown person is claimed to have said: "Governor Whitman to-day reiterated his faith in the fairness and the impartiality of the investigation of charitable institutions being conducted by Charles Strong." Did you ever have any such conversation with Dr. Potter? A. I did not.

Q. Are you the person referred to as the unknown person in that investigation? A. I don't know why they should refer to me.

Q. Are you the person referred to? A. I am not.



Q. Now, Monsignor, I have covered and Mr. Moss has covered all of the conversations that have reference to you. Have you any further statement that you care to make upon this matter? If not, we are finished with your testimony. A. Well, I think the statement that I made this morning covers pretty well the area that I would touch on now if I spoke. I do not think that it is of any particular interest to the Committee here for me to enter into the charities question. I do not think that they want to hear about it, at least they put up such a stubborn resistance to dishonor the mayor in introducing matters here that were irrelevant, that I do not wish to take up their time, except that I do want to say in conclusion that this is not a contention on the part of a few priests. This is a contention on the part, not only of Catholics, but non-Catholics, Protestants and Jews. It is a matter of an attack upon their children — this charities investigation in which Mr. Mitchel has been so deeply interested.

Q. You were charged with being part of a conspiracy against the mayor and the administration. You stated that you, as chancellor, were in charge of the temporal matters of the archdiocese? A. Yes, sir.

Q. Did you ever meet Mayor Mitchel? A. I never met him — never saw him.

Q. Did you ever write a letter to him or cause a letter to be written to him upon any subject? A. Never.

Q. I think that's about all unless you have something further to add. A. I have nothing further if there are no further questions to be asked.

Q. There is just one more. Did Dr. Potter ever say this to you in a conversation on March 24th: "I heard from Farrell, and he says that Higgins advises me to leave the State and get out of the way." Did Mr. Potter ever say that to you? A. He never said anything like it.

Q. (By Mr. Moss).— You spoke of a program which you believed was in progress to secularize the child-caring institutions, not only Catholic, but Protestant and Jewish. I would like to know what you meant by secularizing.

A. The word "secularizing" with reference to the child-caring institutions means this: Not to commit a child to an institution,

whether it be Catholic, Protestant or Jewish, but to farm that little one out in a family and pay pro rata share for its keep, etc. It looks very beautiful; it is really Utopian in the first blush. But who is going to supervise the care of that little one?

Q. Well now, if we took the 22,000 children as an illustration who have been committed to the institutions, does that mean all institutions? A. All of them.

Q. Well now, supposing you take the 22,000 children as an illustration, who have been committed to the Catholic, Protestant and Jewish institutions, if I understand you correctly those 22,000 children coming up before the nation under this plan would not be committed to the institutions where little children, unfortunate children, are taught religious principles, but would be farmed out into 22,000 different families? A. Different families, exactly!

Q. Only in the city of New York? A. Oh, they would farm them out all over the country.

Q. Well now, how would 22,000 families where these waifs might be put, how could they be supervised by the department of charities of the city of New York to see that the children were not made drudges? A. They would increase the budget! I presume that's the only way.

Q. But, can you imagine, as a practical administrator of charities, how these families—these 22,000 families over the country—would be watched to see that they gave the poor little creatures proper treatment, etc? A. It is impossible.

Q. And they might be caught cheating, and they might be taught lying, and they might be taught immorality, and they might be taught anything? A. Anything.

Q. Do you believe, Monsignor, that the fundamental interests of the city of New York are concerned in bringing up the children, especially those who have no homes in which they may be taught properly morality and religion, bringing them up with some idea of those fundamentals, so that when they enter into life they shall not be criminally disposed, but may have at least the fundamentals of decent living in them? A. I believe that.

Q. Do you believe it is essential to the moral life of the city of New York that its unfortunate children should be brought up

in homes of their own sort where they may know something of the faith of their fathers, whatever that may be? A. I believe that if you did not give the child the faith of its father, surrounded with religious influences, that without exaggeration in three decades you would have chaos here in New York.

Q. Do you believe that the conflict of ideas has been progressing in New York City during the last couple of years? A. It has been growing and growing until the situation is now most acute.

Q. Now, there was in attendance upon this hearing the other day a prominent person who is said to have contributed many thousands of dollars to the propaganda of the idea of farming out the children; not using that term, but farming them out. A. Yes.

Q. So that shows that there are people who believe in that idea? A. Yes.

Q. Do I understand that in your attitude towards this investigation and towards the Morey pamphlet, which was issued in defense of the principle that you have enunciated, that those children should continue to be cared for in the way that you have stood for? A. We want religious influences surrounding our children that we have stood for and always will stand for. I beg leave here to serve notice on Mr. Mitchel and his administration, or any other administration, that the Catholic church will never stand for its children being taken away from them. It doesn't make any difference about the ideas of those who attempt it, whether it be for the betterment of the child, as they think, or not, the Catholic church knows its children and is going to fight for its children, who are its very life. And the same of Protestants.

Q. You accord the same privilege to Protestants and the same privilege to Jews? A. Exactly!

Q. Would you prefer that the Jew would take care of his own children, and the Protestant, and not put them in a Catholic place? A. I would prefer the same thing for the Jews and Protestants.

Q. Do you believe the day has come in New York when Jews and Catholics and Protestants have philanthropic ideas, see this

situation together and act as brothers in hospital matters and in child-caring matters? A. I think so — I am sure of it.

Q. Have you found them working together in organizations to press that idea? That is, in this cosmopolitan city, differences should not prevent men from seeing eye to eye the great interests which are involved in bringing up the children? A. Exactly!

Q. And, if I understood you right, you think that children who have been brought up, or who were affiliated with Catholic families, should naturally be taken into the Catholic institutions? A. Exactly!

Q. Same for Protestants? A. Exactly!

Q. And the same for Jews? A. Exactly!

Q. And I believe there is a law or a rule to that effect in the police courts, so that when children are committed to institutions, an effort is made to commit the child to the institution which is of the faith of his father? Exactly! But I may say about that, that this attempt is simply made to prepare the way for legislation, which would do away with that law.

Q. It is a law now? A. It is a law now.

Q. I want to ask you now if the chief magistrate of the city of New York ever served a warrant on you or caused a warrant to be served upon you for criminal libel? A. The mayor has served nothing on me.

Q. (By Senator Thompson).—The fundamental controversy here, as I understand it now, is that the commissioner of charities has an idea that he wants to take the children out of institutions and spread them around, if they are Catholic children, into Protestant families — is that the idea?

A. I wouldn't say that. He would be no more partial to the Protestant than to the Catholic as I gather it, or to the Jew. He would simply farm these children out — place them, if possible, with their own co-religionists, and if it was a matter of indifference, he would place them out to the best advantage. We give him credit for that. But that is not the point. Just now we are protected under the law, and we want our children, the Protestants want their children, the Jewish people want their children — and we all agree that that is for the very best good of this community. First of all, for the respected children, and

then for the community in general, which is going to live on these future citizens.

Q. (By Mr. Moss).— Do you remember a statement of a plan, or, of the principles of the plan outlined by the commissioner of charities in a speech in the Civic club in Brooklyn?

A. I can't remember that. Dr. Higgins would be more or less conversant with that.

Q. (By Senator Thompson).— The child welfare idea, where the money is paid direct to the mother of the children and she permitted to bring them up — I assume that has your approval?

A. It certainly has.

Q. That keeps them in the home, under the home influence?

A. A home is the best place where a child can be always. No man with sense would deny that.

Q. Well, where is it that the commissioner of charities has opposed this child welfare idea so consistently? A. The way I see it, Mr. Kingsbury feels that he knows it all. He has the full grasp of all knowledge pertaining to child-caring institutions and child-caring welfare, and if others cannot see things in his light, then the others are entirely wrong and he is right. He is the only expert. He is the chief expert. All knowledge is centered in him!

Q. Well, the fact is, that he opposed this while being enacted and he also opposed it after its enactment in order to prevent it from being administered, didn't he? A. Yes, he did. If you will pardon me in connection with this thing, I will read you the minutes of the Strong Commission in connection with this Morey pamphlet, which is the most malicious document that has ever been produced in this community. It is a tissue of lies from beginning to end, made to falsify and to distort everything in connection with charity work — Catholic, Jewish and Protestant. And when he was put upon the stand, he was put on three times, Mr. Morey, and finally, under a cross-examination, it was brought out that Mr. Kingsbury, who denied at first that he had had anything to do with it, finally acknowledged that he had supplied \$500 for its publication, and then he went on further in the inquiry. First, Mr. Morey said that he alone was responsible. Then it was brought out that Mr. Kingsbury had a hand in it.

And then, when it was pinned down to Mr. Kingsbury, he said that a lady did it. The lady gave them the \$500! But it was all the same. It was the poor lady all the time. When Mr. Morey was put upon the stand at the Strong Commission and it was finally brought out that he was the man who was responsible for the production of the pamphlet, it was put to him (I shall read from the minutes, page 8309): "Wasn't it unfair for you, when you knew that this pamphlet was not telling the truth, in fact, was maliciously false, to do what you did?" These are his words in answer, which I read from the minutes: "I have a right to be unfair or not, if I like — that's my right; so long as I do not violate any legal obligation of this Commission or of the institutions, I have the right." He has the right to be "unfair!"

Q. (By Mr. Moss).—Whose testimony was that?

A. Mr. Morey, the man who compiled the pamphlet. And when it was brought out further that Mr. Kingsbury was in on the thing and he tried to shift the blame off on somebody else, it was finally brought out that the whole thing was false and malicious.

The minutes further go on to say: "Well, didn't you know that this thing was false?" He said: "Yes." "Couldn't you have stopped it?" He said: "Well, yes, but I thought it was of no importance." Just imagine, of no importance to make a statement that children and pigs were fed out of the same dishes

Q. Is that true? A. It is absolutely false, and it was proved false at the Strong Commission.

Q. Well, that has been printed within the last two days? A. It has been stated by the mayor, practically, and he knows it is untrue.

Q. Has it been proved untrue to his knowledge? A. Read the minutes of the Strong Commission. I can't say to his knowledge because he states it.

Q. (By Mr. Tully).—But it does appear in the minutes of the Strong Commission?

Q. A. It does appear.

Q. That there was no justification for the newspaper publication that children and pigs were fed out of the same dish — is that correct? A. That is perfectly correct, and I shall read to you the extract from —

Q. (By Mr. Moss).—Can you tell us who Mr. Moree is? A. He is the publicity agent of —

Q. Of whom? A. Of the Charity Aid, Homer Folks. I was going to say the State Charity Aid, but the State Charity Aid is Homer Folks.

Q. (By Senator Thompson).—Well, what relation is Homer Folks to Kingsbury?

A. I was going to say he is his father.

Q. (By Mr. Moss).—Do you know anything of the record of Morey?

A. I can't state anything in regard to that. Here is the statement (page 8309): "Is it true that the food which was left in the dishes of the boys was poured back into the pails in which it was brought and then taken out into the barns?" "They were not taken to the barns. They were taken to the scullery, emptied into the garbage can in the scullery, and not taken out, as was in the paper the other day." "Were the tin pails that were used on the table ever taken out to the pig sty?" "No, sir, they were not." "Were they ever taken out of the building?" "No, they were washed immediately and scoured and shined"—that's the testimony of the sister on the stand, who had been drilled for an indeterminable length of time, to clear herself of the charge that she was inhuman. I could go further and read more of these.

Q. That's enough.

Senator Thompson.—The only institution I know anything about is one conducted by Father Baker, at Hamburgh, and as committing peace magistrate I have committed children to that institution myself, and I know where they have made respectable and very decent citizens of boys that went there who were at that time thieves, and they were made into good citizens. I know of that institution. That's one of your institutions. That's my personal experience.

FATHER WILLIAM B. FARRELL, being duly sworn, testified as follows:

Senator Thompson.—Father Farrell hereby waives immunity from any proceeding in any jury or court or committee on account of testimony about to be given before this committee.

Mr. Moss.—How long have you been a priest?

A. It will be twenty-five years this coming December.

Q. What church are you in charge of? A. At the present time, I am in charge of the church of SS. Peter and Paul. The church is on Hicks avenue, while my residence is at 71 South Third avenue in Brooklyn.

Q. How long have you been there? A. About seven years.

Mr. Moss.—Have you ever been a director of the hospital?

A. I was director of the Williamsburg Hospital, and at one time treasurer.

Q. Is that a Catholic institution? A. It is what I would call a neighborhood institution. I was the president.

Q. And your practical relation as director of a hospital in charity matters for the last several years has been then in relation to a neighborhood at which a Presbyterian was the president? A. Exactly.

Q. Have you been associated with the charities of the Catholic church? A. I am associated in no way except that certain charities I have conducted for about twenty-three years.

Q. Locally? A. No, I think I might say through the city. I founded the first day nursery known as the Conception Nursery. We had three or four branches and I might say it was the inception of all of the day nurseries that we now have under the jurisdiction of the Catholic church in Brooklyn.

Q. What is a day nursery? A. Well, I would give you a better idea to tell you how it was founded in 1891. We were overcrowded and the bishop proposed to me some method by which we could allow these children to remain with their parents. We take care of the children during the day while their parents are at work.

Q. Now, Father Farrell, you were named by his honor the mayor of the city of New York yesterday and the day before, as one of a conspiracy of Catholic priests and laymen who antagonize his administration and to wreck the charities administration. It was charged that in pursuance of that conspiracy which has been in existence for some time had recently joined in a conspiracy with individuals to discredit the administration in the charities depart-



ment, particularly in the Strong investigation. You are supposed to have conferred with Monsignor Dunn, and Dr. Potter and a Mr. Hebbard and other Catholic priests have been mentioned. I want to ask you whether in any way directly or indirectly you with these gentlemen or any other gentlemen have been engaged in a movement to do the things which the mayor has charged against you? A. We never have, either individually or collectively to my knowledge interfered with the direction of the city government or conspired in any way to injure it.

Q. Now, I think, Mr. Tully, if you will take up the details of those.

Mr. Tully.—The mayor said yesterday that on the 24th of March you had a conversation over the telephone with Dr. Potter, and he said that an outside wire called up 948 Flatbush, which was claimed to be Dr. Potter's wire. Did you ever call up Dr. Potter's house from an outside telephone?

A. I never called up Dr. Potter's house from an outside telephone.

Q. The mayor stated that the conversation which you had had was as follows:

"Father Farrell.—Hello, is the old gentleman there?

Dr. Potter.—Yes, hold the wire. Hello.

Father Farrell.—Higgins didn't get that last night, but he will have it to-day and I will send it to you.

"Dr. Potter.—They have adjourned until Monday when Kingsbury goes back on the stand.

Father Farrell.—Yes, Doherty and the inspectors go on then.

Dr. Potter.—So, that is the way.

Father Farrell.—Yes, you know they're looking for one man, you know?

Dr. Potter.—Oh, yes.

Father Farrell.—I'll send you \$50, and you slip away this afternoon. I'll send it over with Mike, and I'll send the address of my sister, and you will write there and she will bring the letters over to me.

Dr. Potter.—Yes, I guess it's kind of dangerous to stay here."

Q. Did you that day or any other day say to Dr. Potter that you would send him fifty dollars? A. I never promised to send him fifty dollars. I never before or since gave him any money.

Q. Was there anything said by you to Dr. Potter in substance or effect about sending him fifty dollars? A. No.

Q. Was anything said about him slipping away that afternoon? A. I had an appointment with him on Sunday afternoon so that I knew that there was no question of his moving away.

Q. Now, the conversation further purports to state this:

“Father Farrell.— You take a trip to Atlantic City or some other place, and I will look out for you.

Dr. Potter.— But I would like to get that from Higgins.

Father Farrell.— I will get that from him and send it over with Mike. Now, you get ready and I will send everything over with Mike.”

Q. Did you suggest to Dr. Potter that he take a trip to Atlantic City? A. I did not.

Q. Did you ever say — and this may be anticipating another alleged conversation — did you ever recommend that Dr. Potter go to the Strand Hotel in Atlantic City?

A. I did not know there was a Strand Hotel until the matter was brought to my attention this morning.

Q. Did you ever tell him that the Strand Hotel was the place where all of the priests go? A. I don't know anything about that, I couldn't tell it to him?

Q. How many times have you been in Atlantic City? A. Once in my life. Then, to visit a sick person and after visiting them going home immediately.

Mr. Moss.— You didn't stay at any hotel?

A. No.

Mr. Moss.— Didn't even ride on the board walk?

A. I didn't even ride on the board walk.

Mr. Tully.— Did he say it's kind of dangerous to stay here?

A. No such conversation ever took place as recorded there.

Q. Now, was this alleged conversation read to you before the grand jury? A. The conversation as stated there was not read in that way. There was nothing said to me about Atlantic City. There was nothing said about stopping at the Strand Hotel.

Q. That isn't in this conversation, but was there anything said to you about the time when it was recorded that you said you

would send fifty dollars to Dr. Potter, the time of day? A. In the minutes furnished by the grand jury of Brooklyn, the day stated, of course, was March 24, and the time given in which this message was supposed to be sent from an outside wire was five minutes after twelve.

Q. Where were you five minutes after twelve? A. On the 24th of March, at twelve o'clock I was in the home of my mother.

Q. Where is that? A. Three hundred and twenty-nine Park place, Brooklyn.

Q. And is there a telephone in that house? A. There is not.

Q. At five minutes past twelve or any time in that vicinity, did you ever telephone to Dr. Potter from an outside wire? A. I never left the house until I left there to return to my own home which was possibly between three and four o'clock.

Q. So the conversation about the fifty dollars never took place, is that correct? A. The conversation as regards myself never took place, because it was physically impossible for me to get to a telephone, and I have three witnesses to prove it. There was a certain family affair that brought us together on that day. I can prove positively I was in that home by a quarter after eleven or about that time, and I did not leave that house until four o'clock, so that it was impossible for me to have that conversation. And I want to call attention to the fact that it was from an outside wire and has no reference——

Q. But the mayor said it was Father Farrell and Dr. Potter? A. But there is no reason why he should say so. I can prove positively that I wasn't there.

Q. The fact is, you didn't have the conversation, is that right? A. Exactly.

Q. Now, a conversation was read as purporting to be between you and Dr. Potter on the 25th of March, from Flatbush 948 to Flatbush 1457. It is on the minutes as Flatbush, but apparently it should be Greenpoint.

Mr. Moss.—Well, it is reported from the paper which the mayor read that it was incorrect in several details.

A. The phone messages are different from what we had on the grand jury.

Mr. Tully.—Now, here is what was reported by the mayor yesterday:

“Dr. Potter.—Father Farrell there?

Father Farrell.—Who is this, please?

Dr. Potter.—He knows and you know.

Father Farrell.—Hello.

Dr. Potter.—Hello, boss.

Father Farrell.—Hello, Dr. Potter, anything new?”

Q. Did Dr. Potter ever address you as “boss”? A. Dr. Potter never addressed me as boss. I am boss to no man.

Q. So that that is incorrect? A. Absolutely.

Q. Did Dr. Potter call you—did he say “Hello, boss,” in any conversation with you on the 25th of March? A. He never addressed me in that way.

Q. Did he say it on that day? A. No, sir.

Q. Now, according to the mayor, the following conversation was reported to have taken place:

“Dr. Potter.—They have been on my trail all night. I have a man planted behind a tree across the street from here. All night—at least up to the time that I went to bed.”

Q. Did Dr. Potter say anything about a man being planted behind a tree? A. No, I never remember anything like that.

Q. (continues):

“Father Farrell.—You don’t say; they’re hot after you.

Dr. Potter.—If I had an automobile I could get away from them. I think it would be better. What chances have I got to get that testimony?”

Was anything said in a conversation on March 25th over the telephone by Dr. Potter about getting away in an automobile? A. I think that parts of that conversation conflict. In the one case it says that men are hiding behind trees, and then it says something about the possibility of getting away in an automobile. I don’t think that shows much judgment on the part of Dr. Potter.

Q. You think if they went away in an automobile and men were behind trees, they could serve them with a subpoena? A. I think that was poor judgment of the policemen who wrote that in making it up.

Q. The question is, Father Farrell, did Dr. Potter say anything to you on that point? A. He never mentioned it. In further

proof of that, I had an arrangement with Dr. Potter on that day that the following day we were to go to New York together. Now, why should he talk of escaping in an automobile. Now, those conversations were brought out before the grand jury, in Brooklyn, I mean, in the phonograms we had there.

Q. Now, here is the conversation that I referred to:

“ Dr. Potter.—What is a good place in Atlantic City?

Father Farrell.—There is a place called The Strand. That is the place where all the priests go.”

Did you say that? A. I don't know anything about The Strand.

Q. And you didn't say you knew a place called The Strand?

A. No.

Q. “ Dr. Potter.—Come down there Monday.

Father Farrell.—No, not on Monday, but Tuesday will be better.”

Did you say that? A. No, I had no intention——

Q. Did you have any intention of going to Atlantic City?

A. I had no intention of leaving the city at all. That part of the conversation never took place.

Q. Now, the mayor stated that you had a conversation over the telephone on the 25th of March with Dr. Potter in which it is claimed you said:

“ Dr. Potter.—Hello, Father Farrell, please.

Father Farrell.—Yes, this is Father Farrell; who is this?

Dr. Potter.—Dr. Potter.

Father Farrell.—That boy got back all right. He said one of the men got on the car and got a transfer.

Dr. Potter.—Yes, we saw him follow the boy.

Father Farrell.—Well, he beat him out; got off the car a couple of blocks away and he worked his way around here and they didn't see where he went.

Dr. Potter.—That's good. You know there are three of them and they have a large auto here.

Father Farrell.—Got the number?

Dr. Potter.—Well, I'm going to wait until after twelve to-night, and then I'm going to go over to New York, and I'll get another train.

Father Farrell.—Yes, that's about the best thing that you can do; get out after twelve and they can't serve you.

Dr. Potter.—When are you going?

Father Farrell.—When I told you.

Dr. Potter.—Well, I would advise you to get away as soon as you can, as they'll get you if you don't.

Father Farrell.— Well, I'll meet you down at the hotel I told you about."

Now, did that conversation take place? A. No.

Q. Was there anything in substance or effect said by you with respect to any of the matters contained in that communication?

A. No.

Q. Now, did you say anything to Dr. Potter about getting out after twelve so that they couldn't serve you? A. I couldn't have said it, because I had an arrangement to meet him the next day in New York.

Q. In New York City? A. Yes.

Q. Did you meet him? A. I met him.

Q. Now, you are reported as having said that in a conversation between you and Mr. Hebberd on the 25th of March, an outside wire calling Greenpoint 1457:

"Father Farrell.—Hello.

Mr. Hebberd.—This is Hebberd.

Father Farrell.— I got you.

Mr. Hebberd.—They're after me.

Father Farrell.— I know that.

Mr. Hebberd.— I hope they can't get me.

Father Farrell.— Be careful.

Mr. Hebberd.—Yes.

Father Farrell.— I'm going away to-morrow.

Mr. Hebberd.— That's right; stay away for a week.

Father Farrell.— P. is gone.

Mr. Hebberd.— Yes, I know.

Father Farrell.— They subpoenaed my sexton to-day.

Mr. Hebberd.— What does he know?

Father Farrell.— Nothing.

Mr. Hebberd.— What do they want him for?

Father Farrell.— I suppose for carrying messages.

Mr. Hebberd.— I hope he won't say that I was with you.

Father Farrell.— He doesn't know you

Mr. Hebberd.— That's good ; when I call you up after this my name will be Diamond.

Father Farrell.— All right.

Mr. Hebberd.— Let me know anything that you hear.

Father Farrell.— Gramercy 6264, Irving hotel, 26 Gramercy Park.

Father Farrell.— Is that your home?

Mr. Hebberd.— Yes.

Father Farrell.— I'll say that I am Ryan."

Will you tell us whether anything has been said previous to this conversation on the 25th of March about stating you would use the names Diamond and Ryan? A. Yes. I met Mr. Hebberd accidentally and he told me, he said, "I think that my wires are tapped." "Well," I said, "I know mine are." "Well," he said, "Supposing when I call you up, I use the word Diamond and you can use the word Ryan, and we will use that as a pass word until I find out whether mine is tapped." I said, "All right," and I believe we used it on a couple of occasions.

Q. Were there other people present at the time you made the arrangement with Hebberd about using the word Diamond? A. There was.

Mr. Moss.— When did you begin to suspect that your wire was tapped?

A. I suspected mine, I would say during the early part of March.

Mr. Moss.— What made you suspect it?

A. Well, Dr. Potter and I, of course, we meet three or four times a week either at our homes or in his office, and both of us complained about the difficulty in getting service. Now, when we would call up a number, it seemed ——

Mr. Moss.— Pardon me, but it has been stated here, whether in this room or in the executive room, I don't remember, but it has been stated positively that persons suffering a tap will not know it.

A. I know that.

Q. Now, I am anxious to get from you the symptoms as you observed them, which in your case have been proved by the ad-

mission of the police that they did tap your wire, I want to see what it sounds like? A. They admit that they tapped my wire on the 25th.

Q. What symptoms did you suspect? A. I suppose —

Q. You said it was delayed? A. I always had difficulty in getting a number. It always seemed to me as if they were shoving in a plug somewhere else before I could get my number. It was always a matter of three or four or five minutes before I could get a direct connection.

Q. Well, I had something like that myself recently.

Mr. Moss.—Is there anything else that you noticed? Because I want to get the sense of this on the record?

A. I guess it was more my suspicions than it was the fact—that is, if what they state is true.

Q. And the delay in getting connections? A. Yes, and then constantly there was somebody coming in on our wire. And it confirmed our suspicions, constantly, that we were being tapped.

Mr. Tully.—Well now, was anything said at the subsequent hearing of the Strong Commission of which you have knowledge, about “Diamond” and “Ryan?” In other words, did they pick up the bait in this case as they had when Monsignor Dunn sprung it?

A. They did.

Q. How did they do it? A. Dr. Heberd when he was on the stand was asked if he called up my number and he used those words, saying, “This is Diamond. Is that you, Ryan?” and it showed very plainly that our wires were positively tapped.

Mr. Moss.—Did you believe it was wrong to tap your wires? Were you looking for evidence of an offense committed by somebody?

A. I couldn't conceive what offense we were committing.

Mr. Moss.—When you suspected that your wires were tapped, did you believe that any person tapping your wires was committing an offense, and were you anxious to find out about it?

A. Yes, sir.



Mr. Tully.—A conversation was reported by the mayor yesterday as being between you and Dr. Potter on the 19th of March, in which Dr. Potter is claimed to have said to you: "Well, there is a lot of pamphlets around. I see the Tribune says there were 7,000 distributed.

"Father Farrell.—I see they are going to send stenographers into the churches.

Dr. Potter.—They can't touch anybody for what is said in the churches. Nobody is amenable for what is said in the churches. The World has gone far enough in its article. We have got better advertising last week. Did you send to Albany? That is the main thing?

Father Farrell.—Yes, that was attended to. Have you got enough of the pamphlets?

Dr. Potter.—Yes, but we can get all we want. It is still set up. All we have to do is to put it on the press; that is the last part. I have got it under lock and key here.

Father Farrell.—If I send over for it to-morrow can I have it?

Dr. Potter.—Yes, but you must send someone that we know or we would not let them in. We will not open the door for anyone we don't know.

Father Farrell.—I will send my secretary. Do you know him?

Dr. Potter.—All right, we can peek at him through the glass."

Q. Father Farrell, have you got a secretary? A. I have not a secretary.

Q. Did you ever have a secretary? A. Never had a secretary.

Q. Or anybody that you ever designated your secretary? A. Nobody that I ever designated my secretary.

Q. Or that anybody else designated your secretary? A. Never, that I know of.

Q. Did Dr. Potter say anything to you about anybody peeking at him through the glass? A. I never remember any such expression.

Q. Did Dr. Potter say anything to you about sending "someone that we know or we won't let him in, we will not open the door for anyone we don't know." Was there anything said on that point? A. Never remember it.

Q. Now, Father Farrell, are you not the man whose name is signed to three pamphlets that have been referred to here? A. Yes.

Q. Do you take full responsibility for everything that is said in those? A. I do, for everything that is said in them.

Q. Are you ready to go to any court and assume full responsibility for the facts stated in those pamphlets? A. I have appeared before the Strong Committee and sworn that they were my statements.

Q. They were not written, that is, the first of the pamphlets were not issued by you until after the Morey pamphlet had been issued. Is that correct? A. The Morey pamphlet was distributed on Thursday before our first pamphlets appeared.

Mr. Moss.—Was your pamphlet designed as an answer to the Morey pamphlet?

A. No, sir. The first pamphlet that was gotten out included three letters; the first one consisted of one called the "Public Scandal," addressed to the Governor, copies of which were sent to him and distributed around. There were only a few of them, comparatively small number of them, printed. And then appeared a second letter, and then a third. The third letter never appeared in press. The second one did. We merely sent those to the newspapers. Now, this I know, on the Monday night, of March 20th, no, it was March — the first pamphlet came on the 5th, well, it was the Monday night before that, some one called me up and said he was Monsignor Dunn, and wanted to know if I would give him permission to publish the pamphlet that I had gotten out. I told him then there were three of them. He asked me which was the better of the three and I said, "Why not publish the three of them?" So he wanted to know if I would give my permission to allow them to publish these pamphlets in large numbers and I consented. I promised to send him the different pamphlets, but he called me up shortly afterwards and said that Dr. Higgins had supplied the pamphlets to him and I need not bother.

Mr. Moss.—Well, you suppose that was Monsignor Dunn, who testified to-day?

A. I never saw the man in my life until March 12th. I mean I never saw Monsignor Dunn.

Mr. Tully.—Of this year.

A. Yes. I never saw the man in my life until March 12th.

Mr. Tully.—Was that the day Mr. Thomas Mulry was buried?

A. I met him at the funeral services of Mr. Mulry. He came up to me and asked me if I was Father Farrell.

Mr. Tully.—I have interrogated you about all the conversations that were referred to by the mayor in which your name figured. Have you any further statement to make upon anything that has occurred in connection with that matter.

A. I do not know whether Mr. Moss is anxious to bring out how much the authorities of the Catholic Church had to do with the production of these pamphlets.

Mr. Moss.—I am not anxious to bring out anything, Father Farrell, but I do wish that, as the matter has been opened so wide by the mayor, which was, as I said, over my objection, and largely because I did not want that this Committee should be removed from its pursuit of the committance and obligation by too long a stretch of wire tapping. But since the matter was split open by the mayor, I think we ought to have everything that you believe — now, you are entitled to all the good help to settle this question.

A. My first interest in the charity department —

Q. I have given you notice that I have not forgotten about committances and obligations, Mr. Chairman, and if we get back to-morrow I am going to do it.

Senator Thompson.—We will cover this telephone tapping proposition and then come back.

Mr. Moss.—Well, the matter of charity is pretty small just now. If we can make it large perhaps it would be a good thing.

A. Well, I was going to say, in the fall of 1913 Commissioner Drummond, who was very anxious to improve the condition of our hospitals in Greater New York, suggested to us that we have a gathering, and I believe we had two or three representatives of all the hospitals under Greater New York. We met in the Park Avenue Hotel. We had dinner there and we discussed and

got together a proposition to put before the board of estimate to better our condition.

Mr. Moss.—That is the former charter commission?

A. Now, that was the first great movement that I got into with reference to charity.

Q. Well, that was a non-sectarian movement, was it not? A. Yes, we were all united in that, Jewish —

Q. Fifty or more hospitals? A. About fifty-five were represented, if I remember, in that meeting. In January of 1914, the new administration came into power. Immediately we began to have trouble with the new regulations that the present commission was insisting on their enforcing in our different hospitals. We then had various meetings and a hospital conference which embraced practically all the hospitals of Greater New York, and I brought that agitation to a head. I had fourteen of the principal representatives of the hospitals in New York to dinner at my house and there we brought up the question of the hospitals and what we could do to benefit the condition. Now, about this time, I should say about April, purely by accident, I met Mr. Doherty for the first time.

Q. He is the first deputy of charities? A. I was interested in the placing of a certain surgeon in the Green Point Hospital. Mr. Drummond promised me that position for my friend and, of course, when the new men got into power I saw no chance of helping him. He in turn interested the sympathies of Mr. Doherty. His first effort was to get me in a corner and tell me of this material condition. At the time I said that it was rather strange for a man to impress me with his income. He told me he had an income of \$6,500. He got a thousand dollars from the School of Philanthropy and five thousand as commissioner. He said, "I am a short story writer and I get many thousands more." But it struck me as very peculiar and he tried to express his warm friendship for me, and told me that if any time I wanted anything that I might call on him. The following morning when I went to our own hospital, I found there six rejected cases. That is under the new rulings. There were ten reasons why the city would not accept these cases and I found six under those rules.

. . .

Mr. Moss.—Now, that might not be clear. These private hospitals in the city of New York accept cases which are not able to pay, because the city hospitals have not accommodations for them, and when these private hospitals take in these charity cases which the city cannot care for, the city makes allowances, where it is willing to do it, of about one-half of the cost of caring for these patients?

A. Yes.

Q. And you are speaking of some rules that the commissioner had made tending to limit or restrict the payments. Now, you were talking about Mr. Doherty about those rules. A. I was in my own hospital and found there six rejected cases. I said, "I met this gentleman the other night and I will call and see him." I called on him Tuesday morning. He said he would tend to the matter and pass them over to Mr. Brooks, who was the secretary, or he left them there to be attended to. Well, he got more confidential and I suppose within a space of a half hour he told me how he disliked the various men who were engaged in the charitable work, and that if he and I would work together he thought that the relation would be very pleasant and so on. As I say, he got more confidential, in a few minutes he pulled open a drawer and out of that he drew a large bundle of papers. He said to me, "These are affidavits concerning St. Agnes's Sanitarium at Amityville." These affidavits were in reference to pupils that had been admitted there, and he went on to say to me. He said, "I have these covering conditions here," and he cited a number of cases, and finally told me and said, "I am going to pass them over to Commissioner Kingsbury and I am going to help him to do up the institutions." This is the first time I got any intimation.

Q. (By Mr. Moss).—Did you say institutions?

A. Yes, plural; though he didn't specify Catholics, but that's the expression he used to me.

Well, at this time the hospital situation had become very acute. I was engaged in various committees. I took up the work of defending those institutions and began my first letters against the charity department. Now, I want to say that every time we wrote a letter, I sent a copy of it to the mayor. I received re-

sponses from him, possibly after the fourth or fifth of those letters had been published, in which he invited me to call on him. I called at the mayor's office. They seemed to be very glad to get me there and asked me if I would wait five minutes and they would notify me; and I never received a call from them. Now, the mayor wrote to me in his letter, telling me what the relations ought to be between the private institutions and the city, and begging me to call on him, that we might mutually agree on the different matters and do away with this difficulty. The mayor, I think, snubbed me at that particular time, because he had to go to the authorities here in New York diocese and asked them to call me off. In other words, that I was annoying them, making them ridiculous before the public, and asked that I be restrained. He went to Monsignor Lavelle and he said: "I have nothing to do with that man, he belongs in Brooklyn diocese."

Q. You mean to say the mayor went to the church? A. The mayor of the city went to the head of this diocese and asked that I be stopped.

Q. Then he has some use for the church? A. Yes, *some* use for the church.

Q. Well, Lavelle didn't stop you? A. No, he didn't stop me.

Q. Now, he sent his secretary, Mr. Ruso, to the present Archbishop Munderline, of Chicago, who was then auxiliary bishop of Brooklyn. Mr. Ruso knew him from stopping at Long Beach. I believe they walked the boardwalk together, and had some mutual friendship — what it was I don't know.

Now, the vicar-general of the diocese came to me and said that the mayor had called on the bishop and requested that I be restrained from writing any more letters. He said: "Of course, we can't stop you. You are an American citizen and you can do just as you please, and furthermore, you are not officially connected with any of our Catholic institutions, you are connected with an outside institution. But I make a request of you on account of the Constitutional Convention coming up next year —"

Q. That's the State Constitutional Convention? A. Yes. "We don't care to make any mess with these people." Evidently a threat had been given.

Q. Now, what was coming up that could have been made as a threat? A. I don't know.

Q. (By Mr. Tully).— Might it not have something to do with the taking away from institutions of any public moneys for the dependents that were committed to those institutions?

A. We knew such a proposition was coming.

Q. So there was a suggestion, emanating from the mayor diplomatically, conveyed to you by the Bishop of Brooklyn, that until the Constitutional Convention was out of the way, it was just as well not to antagonize these people? A. Exactly.

Q. And did you lay low? A. Well, I accomplished all I intended to do, and at that time I stopped writing letters against the charities department.

Q. (By Mr. Moss).—When you were writing those letters regarding the charities department you were not writing for Catholic institutions, you were writing for such an institution as the Williamsburg Hospital?

A. I was writing as a director of the Williamsburg Hospital.

Q. Who was the president of that hospital? A. Rev. W. Wells.

Q. He knew you were writing these letters — your entire board of directors knew it? A. Oh, yes, they knew it.

Q. Is the Williamsburg Hospital running now? A. It is.

Q. Receiving cases and curing them, if they can? A. I hope they are doing good work.

I want to call attention to this fact in order to show that there was no conspiracy with the heads of the Catholic church. In writing those letters I never consulted the bishop of the church; I never consulted any priest connected with it. The only thing I might have done was to read them to a few friends, through whom they would go no further, to see what they thought of them.

Q. (By Mr. Tully).—Were they all signed by you?

A. They were all signed by me. I never started to write these pamphlets until I found that the mayor lied, because he promised — the vicar-general told me that the mayor promised that they would take care of the charity matter if I would be restrained from writing any more letters.

Q. I missed one conversation which has just come to my attention. I thought I had covered them all. The mayor read this as a conversation of March 20th between you and Dr. Potter:

“Father Farrell.—Hello!

Dr. Potter.—Hello! This is Potter.

Father Farrell.—Oh, yes. How are you?

Dr. Potter.—I just heard from Hebberd, and he told me he put it all over them to-day, and he said he sprung that detective story on them and said that is what killed Mulry, and he knocked them cold. He also advises us to keep under cover, as they are trying to find out who got out those pamphlets.”

What have you to say about that alleged conversation? A. I would say that the first part of it might possibly be correct, and I wouldn't be surprised if Dr. Potter told me such a thing, but he never used the expression though “that I knocked them cold.” I mean that isn't his language.

Q. Did he ever say that he sprung a detective story upon them? A. He is claiming Hebberd said that.

Q. No, Dr. Potter. Dr. Potter is reported as having said that he heard from Hebberd and that he said that. Did Dr. Potter tell you that Hebberd told him such a thing? A. I wouldn't deny that; that might have occurred.

Senator Thompson.—Father, you said that some letters that you sent or pamphlets that you wrote—that a copy of each was sent to the mayor.

A. Yes.

The mayor said that for the last two years and a half that the charities department had been the strong center of his administration. I want to show you the effect of that—I personally did that—and knowing the effect of that, I mean the effect of those letters on the administration in the beginning and knowing that the mayor broke his promise of not protecting the charities, I determined to write those letters against the Strong Commission and succeeded more thoroughly than I did in the first case.

Senator Thompson.—Well, where were the letters sent?—that's what I was getting at.

A. I sent them to the Mayor's office.



Senator Thompson.— The originals?

A. A copy of the originals were sent to the mayor.

Senator Thompson.— Where were the originals sent?

A. I kept them myself.

Senator Thompson.— Were they published?

A. They were generally published in the papers.

Q. (By Mr. Tully).—To whom were the letters addressed?

A. They were addressed usually to the mayor. We were trying to better conditions in the public institutions. They were so outrageous that I simply appealed to the mayor to cure these conditions that existed in our public institutions.

Senator Thompson.— These letters that were given to the priests — was that done by you or by the mayor?

A. I always furnished them to the priests and, furthermore, when these pamphlets were issued, I went around individually to the editors of the papers and asked them to publish my pamphlet so there is no question as to who did it.

Q. (By Mr. Moss).— Then if it is a libel, your are guilty?

A. I am guilty.

REV. JOSEPH P. DINEEN SWORN:

Q. Your first name Father, is Joseph? And are you secretary to Joseph Hayes of the New York diocese? A. Yes.

Q. And were you so acting in the month of March of this year? A. Yes.

Q. The mayor yesterday read a conversation purporting to be between you and Dr. Potter, conversation running from 948 Flatbush which called 801 Madison square, that is your telephone number? The conversation was claimed to be this:

“Dr. Potter.— Hello, Harry.”

A. What is that?

Q. “Hello, Harry.”

“Father Dineen.— Hello, Doctor.”

Q. Now, what is your first name? A. Joseph.

Q. Did anybody ever call you Harry to your knowledge? A. No, sir.

Q. Did Dr. Potter ever call you Harry? A. Not once.

Q. Did he call you Harry in a conversation? A. No, sir.

Q. The conversation continues as follows:

"Dr. Potter.—Did you hear anything from the seat of war?

Father Dineen.—No, not a word. Maybe it is a little too soon to. You hear anything?

Dr. Potter.—No, but we will soon. Just as soon as the pamphlets get around.

Father Dineen.—How many were given out in Brooklyn?

Dr. Potter.—About 12,000 in Brooklyn and 20,000 in Manhattan. We will soon have them on the run. I thought we would have them on the blink by this time. I think we will put them out of business, they are on the run now.

Father Dineen.—Yes, when the pamphlets get around there will be some time."

Mr. Moss.—Father Dineen, did you ever live on the Bowery?

A. No, sir.

Q. Where did you get that language? A. Why, that conversation is absolutely false. Never had such a conversation.

Q. It cannot be possible that the mayor would give a false conversation, he swore that those were facts. A. I am sorry, but in this connection I might say that the men who manufactured or misrepresented by their testimony our institution and the working institutions are quite capable of manufacturing telephone communications.

Q. Did you ever have that conversation with Dr. Potter? A. I did not.

Q. Did you ever work on the police force? A. I never worked on the police force, but I know a lot about them and their operations. I mean the men concerned with the police department.

Q. There are a lot of good fellows on it? A. Some of my warmest friends are in that department.

Q. They might use expressions like that in a business way? I want to know if you were so closely touched up with them that you would fall into that kind of language. A. I must say that some of the most cultured men I have ever met have worn the uniform. One of them died recently, the Shakespeare of the force, Tully.

Q. The mayor stated yesterday, Father Dineen, that you had conversations with Dr. Potter on the 20th of March. It was claimed to be this:

"Dr. Potter.—Potter speaking.

Father Dineen.—What's new?

Dr. Potter.—Well, I heard from Hebbard and he says he put it all over them and they adjourned.

Father Dineen.—Well, what do you think of that showing of the Holy Name Society? They came 5,000 strong and they represented 50,000 voters and they sent notices to the Governor and they say he is about to call it off.

Dr. Potter.—You know they are trying to get me?

Father Dineen.—Well, you just keep out of the way.

Dr. Potter.—All right, good-bye."

Q. Did you ever have that conversation with Dr. Potter? A. No, sir, I did not.

Q. Father Dineen, did you ever mention in that conversation or in any other conversation anything in substance or effect about the Holy Name Society? A. Well, first of all I did not mention it. I have not had any such conversation with Dr. Potter, I would never think of mentioning it to Dr. Potter, because as far as I know he is not connected and does not bother much about the Holy Name Society.

My impression is that he is not a Catholic at all, and, therefore, why should he be interested in the Holy Name Society? But I have had a conversation over the telephone regarding the Holy Name Society and the action of its delegates, probably on the date mentioned, and that conversation was with Monsignor Dunn. I never had the conversation.

Q. If that is so, if they secured your conversation with Monsignor Dunn, they must have been tapping some other wires than they have admitted? A. I would not be at all surprised.

Q. Did you have a talk like that with Monsignor Dunn? A. About the Holy Name Society? I did sir, yes. I told him that there had been a meeting, that he probably knew about that convocation. I told him that I had read in the papers and had heard too about the meeting of the 5,000 delegates. The Holy Name Society meeting was held in the church of St. Frances. I told

him how those 5,000 men had an open protest to the Governor and representing 50,000 voters they protested against the attitude of the Strong Commission in its dealing without Catholic institutions and of course, with all institutions.

Q. (By Mr. Tully).— Did you say something substantially to the effect that they had sent notices to the Governor?

A. Yes, they appeared in the public press.

Q. Substantially the conversation that I read to you with respect to the Holy Name Society which the mayor said you had with Dr. Potter, was actually had with Monsignor Dunn?

Mr. Moss.— Then, Mr. Chairman, no doubt, Commissioner Woods is acting together with us in perfectly good faith. No doubt, the telephone company is acting in perfectly good faith from the list they supplied us.

Senator Thompson.— Those were at the grand jury?

Mr. Moss.— The mayor spoke here of three wires, and in speaking of the wires that had not been given us because they went to the grand jury, only three wires were spoken of, and I have asked particularly whether such and such wires have been tapped. Now, believing that Commissioner Woods is dealing with us fairly and honestly, and believing that Mr. Swayze is dealing with us fairly and honestly, the question is raised upon this testimony whether there are not taps that have been made, or are being made, that the police authorities do not know about and that the telephone company has not got a record of.

Senator Thompson.— Well, of course, so far as the telephone company is concerned, I think that is true. As far as the police department is concerned, I do not care to say as Chairman of the Committee just yet.

Mr. Tully.— If I may state the question of persons concerned in this is a very distinct one, that the wires of Monsignor Dunn and the wires of Father Dineen have been tapped consistently since this tapping mentioned. \*We have no proof upon that point. The telephone company informed us that if that was done, it was not done with their knowledge. Despite that fact we have a well-defined impression that these two wires were tapped.

Senator Thompson.—What I meant to say is this. I guess, perhaps, I might be misconstrued, but I am willing as Chairman of the Committee to say that the telephone company has supplied us all the information asked and full information.

Mr. Moss.—Yes. And I want to say that I believe they have dealt with us fairly.

Senator Thompson.—I do not want to say they have not, I do not want to make any statement but I will, with reference to the telephone company, that they have supplied us with full information.

Mr. Moss.—Well, of course, this suspicion that Mr. Tully has spoken of is merely a suspicion. In the testimony of Father Dineen we have something very definite that we cannot lose sight of, there is definite circumstantial evidence.

Mr. Tully.—Father Dineen, you were alleged to have had this conversation, according to the mayor, on the 22d day of March:

“Dr. Potter.—Hello. Is Father Dineen there?

Father Dineen.—Who is this, please?

Dr. Potter.—He knows.

Father Dineen.—Hello.

Dr. Potter.—Hello, what do you know?

Father Dineen.—Nothing.

Dr. Potter.—I have just heard this is their last day.

Father Dineen.—Let's hope so.

Dr. Potter.—They were just trying to serve me.

Father Dineen.—Is that so?

Dr. Potter.—But I am not in.

Father Dineen.—That's right.

Dr. Potter.—Well, I think we ought to do something now; if we don't, they will get away with it. We must strike them a blow that will stagger them. Now is the time.

Father Dineen.—Yes, I guess so.”

Did you ever have that conversation with Dr. Potter?

A. Before I answer that question, might I ask if I have been identified as being Father Dineen?

Q. The mayor says so. A. That is the best of identification.

Q. "On March 22, 1916," said the mayor, "Dr. Potter and Father Dineen speaking," and I have read to you precisely what the mayor said. A. On what grounds does he identify me?

Q. He did not require any grounds in his statement. Now, what is the answer, did you ever have that conversation with Dr. Potter? A. I certainly had such a conversation with Dr. Potter.

Mr. Moss.— With any one?

A. I do not know.

Q. Do you remember it at all? A. I never had any such conversation.

Q. With Dr. Potter? Or any one else? A. Exactly.

Q. Now, I call your attention to a conversation claimed to be on the 22d of March, between Dr. Potter and Father Dineen. Flatbush 948 called Madison Square 801:

"Dr. Potter.— Is Father Dineen there?

Father Dineen.— Hello, Doctor.

Dr. Potter.— What's new?

Father Dineen.— Have they served you with a process?

Dr. Potter.— No, there was nobody here and there was nobody around here either. Hebbard fears identification of the pamphlet, but no fear of that. He is incommunicado."

Did you ever have that conversation as I have read to you and as was stated by the mayor, with Dr. Potter on the 21st of March? A. Identification of what pamphlet?

Q. I have read you the conversation, Father, the question is, and please answer it, did you ever have that conversation with Dr. Potter? A. With Dr. Potter? Well, I just want to show at the beginning I never had such a conversation, I say that the thing is absurd. I do not know that Mr. Hebbard ever wrote a pamphlet, I never heard of him writing one.

Q. Did Dr. Potter say to you, "Hebbard fears the identification of the pamphlet, but no fear of that, he is incommunicado." Never had any such conversation? A. Now, I have endeavored to cover all the conversation that appears in the records in which you name was mentioned.

DR. J. J. HIGGINS testified as follows (not sworn):

Mr. Tully.—Dr. Higgins, I have only one question to put to you, you are a Catholic priest?

A. I am.

Q. And connected with what church? A. I am pastor of a church in Long Island City.

Q. How long have you been? A. Twelve years.

Q. I only have one question to put to you that would be of interest to this Committee. On page 26 of the minutes of the proceedings of this Committee yesterday, the mayor stated that in a conversation between Dr. Potter and Monsignor Dunn, Dr. Potter said this: "Well, I suppose we will have to wait. I heard from Farrell and he says that Higgins advises me to leave the State and get out of the way." Did you ever say to Father Farrell that you had advised Potter to leave the State or get out of the way? A. I never did.

Q. Have you ever advised Dr. Potter, directly or indirectly, to leave the State and get out of the way? A. I never did.

Q. Or did you ever advise any other witness? A. I never did.

Q. Or anybody that you thought might be called as a witness by the Strong Commission, to leave the State or get out of the way? A. I never did. On the contrary, I was very keen to have Dr. Potter on the stand. He was available, but I won't touch him.

Q. We haven't had an opportunity to index any conversation claimed to have been had between Dr. Potter and Mr. Higgins. I read from one of the newspaper accounts the conversation of March 22, 1916, Flatbush 948 calling 588 Astoria. Is that your telephone number? A. Yes, sir.

Mr. Tully.—

"Dr. Potter.—Father Higgins?

Father Higgins.—Yes.

Dr. Potter.—What do you think about the Folk statement?

Father Higgins.—That's very bad for them.

Dr. Potter.—That's where the complainant appoints his own judge.

Father Higgins.—Yes.

Dr. Potter.— That ought to blow them up.

Father Higgins.— Yes.

Dr. Potter.— I think so.

Father Higgins.— Are you getting another pamphlet?

Dr. Potter.— Why, sure, when can you get that stuff over to me?

Father Higgins.— To-morrow — three or four o'clock."

Q. Now, what have you to say about that alleged conversation? A. It is substantially correct with the exception of "Are you going to get out another pamphlet?"

Q. Did you say to me, "I am going to get out another pamphlet?" A. No. They put those words into my mouth whoever got the conversation, so that I would be put in the light of asking if he was going to get out the pamphlet and the stuff referred to, I believe, was the testimony I got — the daily testimony of the Strong Commission and read it. I don't use the word stuff and I don't think Dr. Potter does either. There may have been some question of getting the testimony of Dr. Potter, but I want to say now that I never agreed to give them any testimony. I did give it to Father Farrell on several occasions. The exact copy was entered by the official stenographer.

I would like to state to everybody here that the mayor of New York City is simply dangling twenty-two thousand imaginary children in the air to scare us. I am supervisor of Catholic charities, the orphan asylums of Brooklyn, and have under my immediate supervision five thousand children. I invite anybody here present, or anybody in this city of New York to visit any of our institutions, and I defy the mayor or the commissioner of charities, or anybody else in this city to find our children with vermin, with their hair matted, with lice or other conditions spoken of.

Our children are picked up from the purlieus of the city of New York, and they are put into our quarantine stations. They come to us in such condition that their very clothing has to be burned. If an inspector from the charities or the mayor or comptroller goes into our institutions, they will find that condition there perhaps after the child is there for a day or two or three, but otherwise give us a chance with those children for two weeks or three weeks or four weeks, and we will have them in



apple pie order. Another challenge that I make to the mayor is this, for food, clothing, education, equipment, housing, and every other accommodation, I will challenge him to go into our institutions and then visit the public schools of our city and boy for boy and girl for girl I will match the children of the institutions with the public school children both in dress, education, physical equipment and everything else.

The mayor is simply trying to hoodwink the public dangling those twenty-two or twenty-five thousand children — “poor little things.” Mitchel doesn’t care a hoot about the children neither does Kingsbury. They want to work their will. I am familiar with this situation, Mr. Thompson and Mr. Moss. I have been supervisor of those institutions for several years past and I know that our institutions are as clean as a whistle. The doors of our institutions are open to the public and I publicly invite anybody in this gathering to come to our institutions in Brooklyn and they will find us there in daily operation as good as any public school in the city.

Mr. Tully.— Is there anything further?

A. I would like to say that I was present at the Strong Commission the day the mayor testified. He was quite a hero when he stuck his chin forward and said that no threat in the city or State of New York would compel him or force him to call off pressing the charges against Mrs. Dunphy, but he was not quite so brave, he acted the part of a coward, when, at that Commission, he publicly besmirched one of our institutions saying that we carried on our rolls and our bills a dead person.

Our bureau supplied the mayor with ninety-five pages of type-written matter on that subject, and it is absolutely false that we carried a dead person on the rolls and that we were discovered by the mayor. It was an honest mistake. The mayor knew it and we corrected it. As a matter of fact, he knew that we carried that same person on our institution bills without charging the city for fourteen months. We told him that fact. We proved it by the commitment and still he comes out bravely and besmirches sisters down in Amityville. He knew that he was only stating a half truth. I knew it, and I publicly brand him as one who is expressing the truth when it serves his purpose.

Q. Did you, Dr. Higgins, say to Dr. Potter, "Are you getting another pamphlet?"

Senator Thompson.—He said whoever took that put that statement in his mouth, but that is denying whether you made it or not. I don't think you did.

A. Well I deny it so as to fasten upon Dr. Potter the fact that he was getting out the pamphlets.

Mr. Tully.—You didn't ask Dr. Potter if he was getting out another pamphlet? .

A. I may have asked him if another pamphlet was coming out, but I did not ask him that.

DR. DANIEL C. POTTER, being duly sworn, testified as follows:

Mr. Moss.—Now, Dr. Potter, right at the beginning, I suppose if there is any man against whom the mayor's charges bore strongly, it was yourself, because he referred to you again and again and I think he used the language that you were an unfrocked clergyman. As I recall it, that was substantially the language that was used and I merely say that in introduction because I want to give you the situation that you may direct your testimony to it. Now, you have been a Baptist clergyman, I understand?

A. I am still.

Q. And you are still? A. Yes.

Q. Have you ever been unfrocked? A. No, sir.

Q. And have you three times recovered judgments for libel against newspapers, which have publicly issued that story along with it? A. Yes, sir.

Q. Three times you have collected in this city? A. Yes.

Q. Three times you have collected libel judgments? A. Yes, and they paid the money. Now, that we are on the money question, my only regret is that those reverend clergy did not send me the cash.

Q. You mean the five thousand — any sum you may name? A. And if anybody wished to send me any, I would like to give them my address.

Mr. Tully.—Dr. Potter, have you had an opportunity to examine the record of the mayor's statements made about you and the conversations in which you are claimed to have participated?

A. I read with some care the statement made yesterday in which my name appeared and reappeared many times. I also read the statement in the press to-day, and I should be exceedingly grateful to have the Thompson Committee or Commission if it would enable me to reply point by point to every accusation or every statement with which my name is connected.

Q. Well, we are not able to do that this afternoon.

Mr. Moss.—Go as far as you can — use up the time.

Q. I want to direct your attention, Dr. Potter, to the question of a yellow bag which was used as a test by you to determine whether the mayor was tapping your telephone wires through his police department. Now, will you tell the Commission that episode? A. This was in the week — the last week of March. I was at home with the grippe. I asked my son to go to my office and remove from my desk whatever papers he might find, because I already had knowledge that telephone wires were being tapped, and I had every confidence that the spirit that would tap a telephone wire would rob a desk, and I didn't propose —

Senator Thompson.—Are you willing to waive the immunity?

A. Yes.

Senator Thompson.—The witness waives the immunity on account of anything he may say before this Committee, before any jury, grand jury, trial jury or court or other tribunal or investigating committee.

Mr. Moss.—Did you waive immunity with reference to the testimony given before the grand jury in Kings county?

A. I did not, but I do.

Senator Thompson.—You waive that now?

A. I do.

Mr. Tully.—Now, proceed, Doctor.

A. I instructed my son to go to the office. I gave him the office keys, the keys to the desk. I asked him to pick up such

papers as he found in the desk if there were any left, for I had a strong suspicion that the desk had already been burglarized, and I told him to put them in a bag which I gave him; unfortunately, it was yellow, that is, the bag was yellow; and he did so.

After allowing time enough to elapse, as I calculated, for him to remove the papers from my office, I knew in advance that he was going to the office of Mr. Walter Drummond on some business, as he is the attorney in some matters for the Drummond——

Mr. Moss.—You mean your son is an attorney?

A. He is. I called up the Drummond office to ask if my son was there, and he was there. I asked him if he had found the office intact, unburglarized, and he said he had. I asked him if he had succeeded in getting into my desk and taking everything there was there of consequence, and he said he had. I asked him to take the bag, to take charge of it. As a matter of fact, he left it in Mr. Drummond's office. He didn't want to carry it. I think he went back the next day and he carried it to his own home. He did this very promptly, I think it was the next day—it might have been two days, but I think the next day, he was subpoenaed to the Strong Commission.

Mr. Tully.—Who was?

A. My son. No, it couldn't have been the next day. It was Monday. Sunday intervened, as it was Friday or Saturday he went for the bag—it might have been Thursday. I could get the dates. He was hardly on the witness stand in the Strong Commission before he was asked what he did with the contents of the bag that he removed from his father's office. They inquired of him if he had copies, transcripts, proofs, of the pamphlets that had been published. They wanted those proofs. Subsequently Mr. Strong said, "If those proofs"—from the minutes I am quoting—"If those proofs were in the State of New York, they were going to have them."

Mr. Moss.—By proofs do you mean printer's proofs?

A. Printer's proofs of pamphlets. They asked him where I was; they asked my son where I was. He said I had gone to Philadelphia. They asked him when I would return. He said in two or three days, certainly. They said they had been trying

to subpoena me, and my son said to Mr. Strong, "Did you notify my father that you wanted him here?" Mr. Strong turned to Mr. Hotchkiss and Mr. Kingsbury, who sat together, and Mr. Hotchkiss almost shrieked out, "We were too smart for that;" to which my son replied, and I feel very proud of him for his wit, "You would have shown your intelligence if you had notified my father that you wanted him here." Now, this was on Monday, I think, the 26th of March. It has been admitted that they began to tap my wires on the 18th day of March. From the 18th day of March until the 26th day of March no knowledge ever came to me from anybody that I was wanted anywhere.

I was never subpoenaed, I never had a two or three-cent letter sent me, or a postal card, and yet I am charged by the mayor of this town of escaping jurisdiction—of absconding jurisdiction.

Mr. Moss.—I thought when you absconded, you stole.

A. Well, I didn't steal the jurisdiction.

Senator Thompson.—You didn't go anywhere, only to Philadelphia? That wasn't going anywhere.

A. If I had gone to Atlantic City, it might have been different.

Mr. Tully.—Did you go to Atlantic City?

A. I did not. I went to Philadelphia. I was gone two business days, Monday and Tuesday. Immediately after I returned, I say immediately, we heard nothing from the Strong Commission on either Thursday or Friday. My son notified them that I was home and that I was waiting to be subpoenaed, that I would be at my house. He named the time, either in the morning or the evening or whatever. No subpoena server came, so Saturday afternoon I said to my son, "I think you had better go up there and take a letter and say, you have filled the whole world with a clamor that Dr. Potter is wanted here. He has been waiting for three days to come here. When will you have him?"

My son went up and had a letter, which he served on Mr. Strong, stating that I was here, had been waiting here, that I wanted to appear before the Commission. And Mr. Strong replied, "Mr. Hotchkiss and Mr. Kingsbury have closed their case." The Strong Commission never wanted me. Hotchkiss and Kingsbury

did. Strong afterward wrote me that, and I have it in his hand. And neither Strong, neither Kingsbury nor Hotchkiss had any power to subpoena a mouse. So I have escaped, according to his honor the Mayor, or I have absconded from the jurisdiction of Hotchkiss and Kingsbury; wherein was there disrespect to the Governor's commissioner, wherein did I put myself outside of any party's jurisdiction; that is, anybody that is anybody?

I have been unable to figure out how any man of simple intelligence would make the statement that because a New Yorker goes out of town for two days and then comes back, and he hears that people want to talk with him and he waits around and they don't come, and then he goes and demands that he be heard and he has to fight to get on the stand to be heard, I can't figure out wherein there is an absconding jurisdiction. As a matter of fact, Mr. Strong replied to our communications and said that he would give me a hearing in his office sometime soon. That he had gone off for a week, so that is how imperative and important my testimony could be.

Senator Thompson.—You don't charge him with absconding, do you?

A. I don't know. I guess he wanted a rest. I think he needed it about that time. Well, what happened is this: I absolutely refused to go to his office. I wrote him, "No star chamber proceeding for me. You have slandered me all over the world, I will appear in a public place or no place." He wrote me and arranged it although he said we have trespassed upon the courtesy of the Bar Association, we yet will give you a hearing there. I got it on the 14th day of April, and if you haven't it, I would be glad to bring the evidence for the testimony. I will tell you something else about that matter that is funny. I will bring the testimony so that you can see. Mr. Strong practically asked me three questions. One of them was about something that had occurred in the investigation of the Commission in Albany, and I replied that I hadn't read the testimony at that end of the line. I hadn't seen it. I had read the testimony as to what occurred here in New York in relation to this inquiry here. He then wanted to know if I knew that when Doherty was asked if Reeder wasn't an expert, that Hotchkiss asked the question and Strong didn't.

Mr. Tully.— Now, will you finish the narrative about the yellow bag, then we will conclude if the Commission will permit.

A. Well, this is what happened about the bag. When my son had gone on the stand and he had told them that I would return, and the little episode of the lack of intelligence in not notifying me that I was wanted, Hotchkiss asked my son a further question about the bag, to which my son replied, "You have been listening on my telephone." And Mr. Hotchkiss said, as you will read in the minutes, "Well, didn't I make a pretty good guess?" He asked my son what was done with the bag. They knew what had been done with the bag for they had heard. My son took the bag down to his office. He sent it by an office boy over to his own house, which is about four blocks from my house. He telephoned his wife and he asked her to take it over to my home the next morning, and she did. My daughter-in-law — that puts a lump in my throat when I think of these alleged men — my son's wife did what her husband told her to do, and the next morning these men were there to subpoena her. She with two little children, to take her up to the Strong Commission, to have her divulge the crime of removing a hand bag from her own home to the house of her husband's father.

Well, they didn't get her for some reason, something slipped, but they immediately got my son. He had to go back, they had him back three times about the bag. What was in the bag? what would be done with the bag? and so on — all about the bag? A. Commission appointed by the Governor's staff.

Mr. Moss.— That was the question. What was in the bag?

A. Well, now the bag became mixed. Father Farrell determined to go out of town. Father Farrell called up one of his assistants and said, "Put a few of my things in a bag, I am going to stay over at my sister's house. Send it down to a cafe on Court square and I will stop there and get it on my way to Manhattan.

Q. Does his sister live in Manhattan? A. One sister does. He has another sister in New Jersey. Father Farrell came along; by the way he was stopping at the house of a clergyman up in Greenpoint, Monsignor O'Hare. He just went over there for a visit with him, and he made up his mind to go and see his sister.

He comes down to this cafe in Court square and a friend stepped in there to get the bag, the friend passed out, gave the bag to Father Farrell who was in the auto, the auto disappeared promptly; by this time the news had got around. In rushed into the cafe two of the sleuths of the Strong Commission and demanded the bag. There was no bag. I am telling you the truth. This is sworn, too; that is, I am telling you what was sworn to. I wasn't there, I didn't see it, but Lear was there, he saw it. Promptly, they subpoenaed the proprietor of the cafe to come to the Strong Commission. He was a German and he meant well.

So having an idea that he might be connected with some anti-Kaiser plot or something of that sort, he appeared at the Strong Commission scared to death. They asked him if he had a bag. Oh, sure he had a bag. What became of the bag? He didn't like to tell them what became of the bag. They insisted on knowing what became of the bag. He says, "I took it home." What did it have in it? By and by he admitted that it had sausages and bologna. That all came out at the Strong Commission.

Mr. Moss.— That is in the testimony?

A. And that is in the testimony only that they say there were refreshments in the bag, but we will give you affidavits that the man testified as to the lobster and frankfurters and I think pie. That was the end of the search for the bag.

Mr. Moss.— That is what you meant when you said the bags got mixed?

A. Exactly so.

Mr. Moss.— The German was talking about his own bag?

A. He didn't know there was any other bag on earth.

Mr. Moss.— By that time what had become of the charity question down there?

A. Well, when I was on the witness stand I was asked what was in the bag, and I told him papers of value, private correspondence, various matters that no man would care to have anybody take out of his desk. In addition to that, I shall hope to present to this Commission, at least one paper that was there.



It was made by a man who is dead, a friend of mine, a priceless paper. I would as soon have thought to have placed the traditional pearls before swine, as to have allowed those gentlemen to have had their hands in my private papers.

Senator Thompson.— Well, we will give you an opportunity to do that to-morrow morning. And now I think I want to meet promptly at 11 o'clock to-morrow morning.

Adjourned to May 26.

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### MAY 26, 1916

Session of Friday morning, May 26, 1916.

Convened at 12 o'clock.

WALTER J. DRUMMOND was called as a witness and, having been duly sworn, testified as follows:

Q. (By Mr. Tully).— Mr. Drummond, what is your business?

A. Iron business.

Q. How long have you been engaged in that business? A. About twenty-one years.

Q. Where is your place of business? A. Fifty-one Chambers street.

Q. Are you connected in any way with any of the charities of the city of New York? A. I am not.

Q. Have you any interest in the charities of the city of New York other than that which any good citizen might have? A. I have not.

Q. Are you acquainted with Dr. Potter? A. I am.

Q. Do you know where Dr. Potter has his office? A. Fifty-one Chambers street.

Q. The mayor, when he appeared before this Committee, read an alleged conversation which he said occurred on the 20th of March. According to the mayor — Potter and Walter Drummond speaking:

“ Dr. Potter.— All right, what did you hear yesterday?

Mr. Drummond.— Oh, quite a lot. What did you hear yesterday?

Dr. Potter.— Oh, quite a lot. I am not going to the office to-day, as they are looking to get me on the witness stand.

Mr. Drummond.— Look out that they don't get you on the telephone.

Dr. Potter.— Oh, we are careful of that. You see the girl answers the 'phone and she finds out who it is first.

Mr. Drummond.— I would keep under cover, as they will get you if they want you, and you know they will blame you for everything.

Dr. Potter.— Well, I know I have done everything.

Mr. Drummond.— Well, you didn't sign your name to it, did you?

Dr. Potter.— That is about all I didn't do, but if they get me on the witness stand, I will tell about seven thousand things they don't want known."

Mr. Drummond, what have you to say about that alleged conversation? A. That conversation never took place.

Q. Did any part of that conversation take place? A. None whatever.

Q. When you say that, you mean, at least as far as you are concerned? A. Absolutely, yes. I am talking about my end of it.

Q. You are not the Walter J. Drummond referred to in that conversation? A. No, sir; I never had any part of that conversation.

Q. Do you know any other Walter Drummond who has an office in your building, 51 Chambers street? A. I do not.

Q. The mayor stated as a fact that on the 21st of March, 1916, a telephone conversation was recorded, as he stated — "Potter and Drummond speaking"—and this, he said, was the conversation:

"Dr. Potter.— Hello, Walter, has Dean been there yet?

Mr. Drummond.— Yes, he is here now. Do you want to talk to him? I will put him on?"

And then the rest of the conversation apparently is claimed to be between Dr. Potter and Dean Potter.

Q. Was that conversation had between you and Dr. Potter? A. As far as I am concerned, yes.

Q. And all that was in the conversation was that you said Dean Potter was there and then you put Dean Potter on the telephone? A. That is correct. I know nothing about the conversation between Dean Potter and Dr. Potter, as I walked out of the room. I might add that Dean Potter was there in connection with a legal matter and not in connection with this investigation, as far as I know.

Q. Now, the mayor stated as a fact that the conversation was recorded on the 25th of March from 948 Flatbush to Worth 4998, between Dr. Potter and Walter Drummond.

Mr. Drummond, is your telephone number 4998 Worth? A. It is, yes, sir.

Q. The mayor stated that this was the conversation:

"Dr. Potter.—Mr. Drummond.

Mr. Drummond.—Hello, Dr. Potter.

Dr. Potter.—Anything new?

Mr. Drummond.—Not a thing.

Dr. Potter.—I am going to slip out of the city. It is necessary and it is indispensable that they don't get me on this matter.

Mr. Drummond.—How is everything otherwise?

Dr. Potter.—Everything is all right, and I will let you know where I will be."

Mr. Drummond, what have you to say of that conversation? A. I had a conversation with Dr. Potter that day, but that was not the conversation.

Q. Did Dr. Potter say anything to you about it being necessary and indispensable that they don't call him on this matter? A. He did not.

Q. In substance or effect? A. No, sir.

Q. The mayor stated as a fact that on the 25th of March this conversation was recorded, the mayor stating:

"Dr. Potter calling Worth 4998, Dr. Potter and another party unidentified."

Q. 4998 Worth is your telephone number, Mr. Drummond, is it not? A. It is, yes, sir.

Q. This is the alleged conversation:

"Dr. Potter.—Is Mr. Drummond there?

Other party.—Who is this, please?

Dr. Potter.— Put Mr. Drummond on. You know who this is.  
Other party.— Oh, yes.

Dr. Potter.— There are three fellows outside laying for me. There are two packages in the office on the left of mine. Will you put them into my office and I will get them to-morrow?

Other party.— Sure, I will do that. If you like, I will send them right over now.

Dr. Potter.— I don't want to trouble you so much.

Other party.— That is all right. I well send Joe Scully over with them.

Dr. Potter.— Well, all right, but only send one package, the smaller one.

Other party.— What chance has he of getting in.

Dr. Potter.— He will get in all right.

Other party.— I will tell you how you will know him. He is wearing a brown tie.

Dr. Potter.— All right, Walter; good-bye."

Did you have a conversation with Dr. Potter on that day? A. I did.

Q. Was anything said in that conversation by you about anybody wearing a brown tie? A. Not to my memory. I don't remember saying any such thing. He knew who Mr. Scully was, and there would be no need of my trying to identify him.

Q. Was there some mention made of two packages which were in Dr. Potter's office? A. Dr. Potter said there were two packages of cigarettes which were to be left in his office or an office adjacent to his. He wanted to know if I would find out if they were there. I told him that if they were, I would send them over to him. I sent Mr. Scully up to see. Mr. Scully returned and said they were not there.

Q. Mr. Drummond, did you subsequently call up Dr. Potter? A. I did.

Q. Did you ever call him on an outside wire? A. I never did.

Witness dismissed.

DR. DANIEL C. POTTER was called as a witness, and testified as follows:

Q. (By Mr. Tully).—Dr. Potter, will you tell us what opportunities you have had to observe the conduct of charitable institutions in this city?

A. Well, I have lived here nearly all my life. For some thirty years I have been more or less connected with private and public institutions, and for nearly ten years I was the chief examiner of accounts of private institutions in the department of finance, during which time I had supervision of the payments of the bills of private institutions for the care of such inmates as were accepted as proper charges on the city.

Q. Under how many comptrollers did you serve? A. Under Comptroller Grout, Comptroller Metz and perhaps six months under Comptroller Prendergast.

Q. Well now, will you tell us briefly the results of your observation of the conduct of charitable institutions prior to the coming in of the Mitchel administration? I ask you that because of certain statements made by the mayor, some of them directly affecting you, as to the aims and ambitions of the mayor with respect to his administration when he came into office. A. The mayor, I think, did me the honor to mention my name some seventeen or eighteen times in this matter which was given to the press.

Q. You mean before this Committee and as published in the press? A. Yes, and he made this statement, "When this administration took office, it had a definite program and purpose with regard to the institutions which care for the dependents committed to them by the city. That purpose was to secure humane treatment and care and proper nourishment, proper clothing, proper housing and proper recreation, particularly for the children committed to these institutions"—which is a left-handed way of saying that prior to the Mitchel administration there was no humanity, there was no proper care and there were no good institutions.

It is very difficult to understand the institutional situation in the city of New York without knowing how the city became identified with what is known among philanthropists or charity workers as the New York system, the New York system as distinguished from the Massachusetts system and the system in some other States.

In Massachusetts, they have no private institutions, as we know them here. Their problem is a little one. For instance, in Boston, they care for a thousand children. There are 35,000 children per annum going through the charitable institutions of the city of New York.

Pardon me, I will briefly try to sketch the situation, if I may. About 1800, there were no private institutions. Poor children, if they were weak and anaemic (when I say "poor children," I mean dependent children) were placed in almshouses, poor-houses, known throughout the State. They were under the care of either overseers of the poor or poormasters. If they were sufficiently strong, boy or girl, they were "bound out." They were made slaves to whoever would take them until they were twenty-one years of age.

Along about 1850, there were living in this town large numbers of homeless children, boys and girls; and Christian men and women, moved with compassion because of this lack of care and seeing children roaming the streets and the crime of infanticide was something horrible, decided to do something to ameliorate this condition. The children in the public almshouses who were too weak to be "bound out" lived there, grew up there, were educated there, and many of them spent their lives and died there. There is one case up in the State of New York where, from one woman who lived and stayed in an almshouse and continued to remain there, there were, there were 109 of her descendants also living and staying in almshouses, so there began, in a few words, an institution called The New York Juvenile Asylum in 1850. Such men as Peter Cooper, the man whose picture is on the wall in that room where we were yesterday, Andrew H. Green, men of such stamp were engaged in that work. The work continues until today. The Children's Aid Society began. I remember in 1872, 1873, 1874, 1875,—anywheres along there, anybody passing down Park Row, particularly near the old World building that stood at the corner of Beekman street, where there was a grate beneath which there were boilers. At one, two, three, four o'clock in the morning any time, a small squad of poor boys could be seen humped over that grating in midwinter to get the warmth that came up from below.

The conditions were such that in 1865, William Letchworth, a man of means, living out at Geneseo, New York (and, by the way, he gave his home there for a park, as it is now known), devoted not only his time but his means, going through the State to see if something couldn't be done to change the dreadful conditions that were existing here in this splendid State of ours. As a result of his work, a law was passed making it impossible in the State of New York to commit a dependent child to a public institution unless it was criminal. In the case of a child under two years of age (for it sometimes happened that people were placed in jail who had children under two years of age), the mother was permitted to take the child.

As a result of that change in the law of 1875, children's institutions began to grow more rapidly than before. You would be surprised if you knew the number of them now. At the present time, there are 39 children's institutions in the city of New York with which the city does business; 47 general hospitals; 4 tuberculosis hospitals (by the way, private hospitals sprang up precisely as private children's institutions sprang up, because it was felt that people didn't receive the care and attention that was proper and necessary in the public institutions); 10 institutions for the blind and defective; 13 reformatories and delinquent institutions; 7 eye, ear and throat hospitals; 11 dispensaries; 6 maternity and babies' hospitals; 14 miscellaneous sanitariums and homes, etc. Roughly speaking, at the present time, there are from fourteen to fifteen or sixteen thousand beds in private hospitals and the numbers are constantly increasing, and the occupants constantly changing.

Mr. Moss.—Public hospitals couldn't begin to do the work of caring for the poor that have to be treated?

A. As from four to sixteen.

Mr. Tully.—Explain that four to sixteen.

A. There are between four and five thousand beds in all the public hospitals, though the numbers are increasing by the addition of new hospitals; and there are 16,000 beds in the private hospitals, and their numbers are increasing. They grow like magic over

night, these private hospitals, in this benevolent or beneficent town of ours.

In 1872, there was organized in the city a society or an association known as the State Charities Aid Association, a body of very kind gentlemen and benevolent ladies, who decided to inspect and undertake to improve the conditions in public hospitals. Strange to say, this association as it developed, somehow naturally developed an antagonism to the system of private institutions. It has never succeeded in obtaining the right to inspect private institutions, but it has the lawful authority, upon application to a magistrate or a supreme court justice, to obtain information with respect to public institutions.

In 1894, there was the Constitutional Convention of the State of New York, and a most determined effort made by the anti-institutional element of the State against all private institutions, a determination to do away with them, a determination if possible to accomplish this either by the development of public institutions for the care of children or by this boarding-out process, by placing children in homes.

But, the State of New York had had some seventy-five or eighty years of boarding-out children, baby farms, and there wasn't any disposition in the Constitutional Convention to have the old system revived. It had taken too much trouble and had cost William B. Letchworth and his friends too much effort to do away with the old system. That is one of the most interesting chapters in the history of the State of New York.

Now, had it not been for Edwin Lauterbach, in all human probability, the Constitutional Convention in 1894 would have made it impossible for cities and towns to transact some of their dependent business in private institutions. Private institutions obtained grants from the Legislature, many of them. They got too much money that way. The Legislature was charitable, but it was felt that there ought to be some curb upon that method of compensating or assisting private institutions. Nevada N. Stranahan in 1898 presented an act making it possible for (obligatory no longer) the State to make lump sums, or make grants of lump sums, but making it possible for cities and towns to lawfully make payments upon a per capita basis for the care of dependents, either in



hospitals or in children's institutions. This city adopted that system.

Mr. Moss.— That is, where it was impossible for the city, with its public institutions, to do the work and they were obliged to resort to private institutions to work it out, then they could make grants of the local funds to the private institutions to help the private institutions do what the city could not do. Is that right?

A. They could either do that or they could do all their work in private institutions, if they so desired, and, as a matter of fact, there are western towns in this State and there are cities in other States that have copied this general idea of doing all their work in private institutions.

It was determined almost immediately to inaugurate the per capita system. A most capable man named Edgar Levy, since deceased, prepared a schedule or a program upon which the city might embark in the charitable institutions with this system. The work of Mr. Levy and the committee that he used was summarized in this pamphlet which I have. By the way, it is out of print. I wouldn't part with it for anything. The city ought to reprint it. "Municipal Subsidies to Private Charities, being a Report to the Board of Estimate and Apportionment, by Bird S. Coler, Comptroller of the City of New York." He provided that there should be in the department of finance a bureau to have charge of charitable institutions, that is, supervision of charitable institutions, in order to determine whether or not the institutions were earning their money, whether the city was getting what it was paying for in the institutions. That was developed during 1901 and 1902 by Mr. Coler. That bureau, that work, as soon as Mr. Grout became comptroller in 1902, he very graciously called me to that position. His purpose was to work just as harmoniously as his department could, recognizing the invaluable services that were being rendered by these gentlemen in the private institutions, and so, by co-operation and by mutual help of the city, derive the largest possible advantage from the voluntary effort of the good men and women who were engaged in this enormous number of institutions.

It was our business not alone to certify to the accounts of the institutions, but it was our business to visit them, to inspect them, insistently visit and inspect, and we did so.

Mr. Tully.—Did you personally?

A. I not only personally visited them, but I spent all the time I had; I went to them Saturdays and Sundays. I stayed in them. I knew them as I know the back of my hand and better. I know them all. You can't name me a charitable institution around New York that I don't practically know all about at the present minute.

Mr. Grout was followed by Mr. Metz. Mr. Metz — oh, the most level-headed of all businessmen; state to him the third of a proposition and he knows all the rest. He saw the desirability and advantage of pressing this particular kind of work.

Now, I want to say it can't be for a moment imagined that conditions were not found in a private institution that would cause complaint. The private institutions were always burdened by providing their own plants. Plants became worn out. These plants are the product of charitable effort, of contributions, of benevolent gifts.

Mr. Moss.—They have to go out and beg for it.

A. They have to fight for it, and so it oftentimes comes about that something will be worn, something won't be as it ought to be. The institution would be glad to change it, but it hasn't the means.

Now then, it was our business, as far as possible, to assist by advice and by co-operation and help to enable them to make changes, and I want to say changes were made insistently, persistently, not only in the plants, in the care of children, in the education of the children, but in every other way. Why, the educational system in the private institutions was begun under Grout and developed under Metz. Whatever change was made in a private institution was made by co-operation with the trustees and the managers, but there wasn't any publicity, there wasn't any defamation, and there wasn't any disposition to exploit either the department of finance, the charitable work of the board of estimate and apportionment, nor was there ever a disposition to damn an institution or the people who were supporting it.

Now, so completely was this system worked out that when Herman A. Metz had reports made from the heads of the several

bureaus or divisions of the department of finance in 1908, the report of our division required eight pages to set forth the work of that bureau or division. I will only read two paragraphs of that report:

“This division should extend its system of examining institutions (considered first because of prime importance. This subject has been treated at length and formal reports presented to the Comptroller in 1903, 1905 and 1906). The advantages of regulation and frequent examinations would be very great. They keep the institution upon a high grade of effort. The knowledge that an institution is to be carefully inspected, and, if found worthy, commended and appreciated was a great stimulus to the working corps. The consciousness that the Comptroller is intimately interested and closely informed as to the quality of book-keeping and of office work and the adequacy of the care and maintenance given and the general progress of the institution is a great incentive to continuous effort and a stimulus to advance and improve.”

Almost immediately upon the election of Mr. Prendergast, who, by the way, came into office pledged to destroy this system, there was a change. The pledge was made without due realization at the time. I am not trying to, the familiar phrase is, “knock” the comptroller. Please don’t understand that I am; I am not. The very same people that at the present minute are behind this investigation, finding its outlet in the Strong Commission, were the people that persuaded the comptroller that the department of finance of the city of New York did not need to know what was being done in the private institutions, and that the work of the State Board of Charities was all-sufficient and could be accepted as the necessary certificate upon which payments could be made. The comptroller saw it that way. The private institutions bureau ceased its work of investigation in institutions other than so far as the accounting system was concerned. The mayor made this statement in his paper:

“In the course of this investigation by the Committee, it became my duty to examine the witnesses who were sworn under the power and subpoena of the commissioner of

accounts. Among others, Monsignor McMahon, a moderator of Catholic charities, was placed upon the stand and examined by me, and he there admitted under oath that these funds he had been collecting for the purpose of paying a fund over to Daniel C. Potter as an honorarium. He further testified, as can be seen by the record taken in that proceeding, that, having collected moneys for this purpose, his conscience hurt him at the thought of paying them over to a public servant for services rendered in connection with his public service in a supervision of these institutions that subscribed a fund, and for that reason, he did not pay the money over to Daniel C. Potter, but appropriated the money to his own use, without asking permission or stating anything concerning his purpose to the institutions which had subscribed it."

I desire to answer that statement.

Mr. Moss.—I think it appears on the record that that priest is dead and he can't come here.

A. Oh, well, I am here. That man was broken and burdened by the insults that were heaped upon him in this identical investigation. He was my dear friend. I don't die that way.

An employee of the commissioner of accounts office produced on the order of the Strong Commission an alleged transcript of a biased investigation before Commissioner R. B. Fosdick in 1910. The Strong Commission received that paper in evidence. The purpose of it, as explained by Mr. Hotchkiss, is "to show the manner of man (that is me) who has been trusted by certain gentlemen with the preparation of a certain pamphlet."

Mr. Moss.—That means that libelous pamphlet?

A. Yes. And, by the grace of God and two comptrollers, I was entrusted with the expenditure of about thirty thousand dollars of the public funds, and although the bureau of municipal research and an indefinite number of accountants were placed for days and weeks and months in rummaging, re-auditing the work that I did for ten years, they did not find that one penny was misplaced.

There is in the record a pretended summary of the stenographer's minutes by Mr. Hitchkiss. These very stenographer's minutes that the mayor is quoting from which he says is his personal work done with fairness. The salient feature of this entire matter is a \$500 check which it is artfully insinuated that I received. The other items of the alleged testimony are sufficiently explained. Mr. Hotchkiss says in those minutes, "This gentleman resigned from his office on or about the beginning of this investigation." This is a false or misleading statement. There was no word of any investigation, nor did I ever hear or dream of one until after I had resigned to go to the ambulance board.

Mr. Hotchkiss states, page 8069, that on or about January, 1907, a fund of several thousand dollars (the mayor says \$5,000) was raised by charitable institutions for a gift to me. There is no such evidence on earth. Nothing like it ever happened. It is no fault of mine that well-meaning but ill-advised friends, without my knowledge or consent, at one time proposed among themselves to make me a present. Their plan was hardly started before they saw the impropriety of it and they abandoned it. I never heard of it until the matter was three years old and learned it first from the public press. I never received a penny from that undertaking.

When I was before Commissioner Fosdick in this very investigation that the mayor speaks of, he volunteered the statement that a certain check for \$500 about which comment was made had not been quoted connected with me, and he refused, flatly refused, though strongly urged, either to let me see the check or to testify concerning it. There has never been a particle of evidence to show that I ever received any of that money. On the contrary, there was positive, unimpeachable evidence that I received none of it. No one ever doubted that the late Mayor Gaynor knew what evidence was when he saw it, and he patiently heard and rejected that whole story. Mr. Fosdick's minutes are incomplete. They do not contain his admission that the check was not connected with me nor do they fully show that he refused to allow me to testify concerning it.

Mr. Fosdick's confidential report to the mayor — by the way there it is; the mayor gave it to me, was given or sent with this

message—I refused it. I threw it at him and expressed my mind. I knew all the facts. It is not true. It is garbled and contrary to the truth, as I well know. The complete answer to Mr. Fosdick's muckraking report is this—after he tried to give it to the mayor, the mayor authorized my appointment as director of the ambulance board and he administered the oath of office. Mr. Fosdick very shortly afterwards resigned, the newspapers said, to become secretary of a motor company; in reality he went into the Rockefeller service instead.

Mr. Tully.—Is he a trustee of the Rockefeller General Education Board at the present time?

A. I am so informed. None of the papers received from the commissioner of accounts that were offered were evidence. Their introduction was scandalous and for the purpose of making and perpetuating scandal, and that was the reason and the only reason that John Purroy Mitchel retailed this dead and stale yarn about the \$5,000 and the \$500 item.

The confidential report, so called, contained within itself a statement under oath by the late Monsignor McMahon who had the \$500 check that he gave none of it to me. Mr. Fosdick's paper was and is simply a malicious attempt to vent personal spite and do harm, and that was the character of the mayor's paper.

I will offer you an extract from the proceedings. By the way, we had our own stenographer present; that is how I happen to have it. This was identified and sworn to:

"June 14, 1910, a hearing before the Commissioner of Accounts, Stewart Building. Commissioner Fosdick stated he had finished the examination.

Mr. Grout.—I think you ought to show Dr. Potter the other check and ask him about it.

Mr. Fosdick.—No, I think not. That is not connected with him directly as yet, and I do not think it would be wise to show it to him now.

Mr. Grout.—I would like to show it to him. Please note on the minutes that I asked the commissioner of accounts to produce a certain check he has in his hand so that we could show it to the

witness and find out what the witness knows about it. The commissioner of accounts declined.

Dr. Potter.—Will you add further that I have answered very freely and very informally to the best of my knowledge under oath?

Mr. Grout.—I think you ought to show it to the witness.

Mr. Potter.—I do not want to be put in a trap. What can a man remember after six or seven years?

Mr. Fosdick.—No trap at all.

Dr. Potter.—Have you any questions?

Mr. Grout.—Nothing except that.

Dr. Potter.—You are informed.

Mr. Fosdick.—If any questions are asked this witness, they must be asked through the commissioner of accounts.

Mr. Grout.—Did you decline to let me ask the witness any questions?

Mr. Fosdick.—Yes.

Mr. Grout.—Please note that you have been informed, Dr. Potter, that a certain check drawn to the order of another person and yourself and accompanied by some voucher bearing annotations referring to you in the sum of \$500. I desire to ask you what, if anything, you know about that check and voucher.

Mr. Fosdick.—I refuse to allow the question.

Mr. Grout.—I think in the interest of fairness, so that you might be acting fairly yourself, so that you can take the matter up——

Mr. Fosdick.—No, it has long been the precedent of the office to have questions asked through the commissioner of accounts.

Mr. Grout.—I think you are assuming an unfair attitude, if you want the truth, the whole truth and nothing but the truth.

Mr. Fosdick.—No, I shall have to adhere to my decision on that point. The hearing is adjourned."

I never had an opportunity to answer about that \$500 check until I stood before the Strong Commission on April 14th, from this time in 1910, and this, the slander repeated by John Purroy Mitchel, I have the opportunity of answering.

The mayor testified that during an examination conducted by himself and Comptroller Prendergast there had been found a

voucher referring to a fund of \$5,000 subscribed as an honorarium to myself. I read that from the papers before I began. Now, the mayor cannot plead ignorance or mistake about this. This cannot be blamed on a subordinate. He quotes the record. He says he was there and examined the witness. He says these funds, that is, the \$5,000, had been collected to be paid over to me. He says Monsignor McMahon testified that, having collected, he did not pay it over, but appropriated the money to his own use without asking permission or stating anything concerning his purpose to the institutions which had subscribed it. This, he says, is what Dr. McMahon testified to under oath.

There never was a fouler or falser slander upon the memory of a loved and respected man now in his grave. In the first place, there never was any \$5,000 fund. The sworn testimony of men of unquestioned integrity plainly established that there had never been such a fund, and this testimony was given in Mitchel's presence. Dr. McMahon never gave any such testimony as the mayor attributes to him.

His testimony was this—he said that at a meeting at which several gentlemen were present some one had suggested that a gift be made to myself, and later Father Fitzpatrick had contributed \$500 for that purpose. This is from the record:

“Q. Did any of the other subscribers subscribe with the same understanding?

McMahon.—Absolutely no.”

He explained that, as a supervisor of charities, and with the sanction of his superiors, he had obtained contributions for the education and after-care work of his office and other matters paid out of his own pocket, but that no other money had been contributed as a gift for myself. Monsignor McMahon did not testify that he appropriated any of this money to his own use. He said it was thrown into the general fund, “thrown in with the rest of the money I (Monsignor McMahon) had received up to that time,” referring to this money that he was raising for the diocesan matters and the \$500 which had been given for the proposed present. By the way, it was only \$3,200, between \$2,600 and \$3,200, that they raised anyhow. He did not testify that he had done this without permission or stating anything concerning his purpose to



the institutions which had subscribed it. On the contrary, he said, "I am pretty sure I told Father Fitzpatrick what I spent the money for. I must have, because it was no secret at all."

You know, I can fairly hear poor McMahon's mouth, I can fairly hear his voice as he said that he had the sisters from the institutions come together several times a year, at which reports were given, and he added, "I told the sisters."

Monsignor McMahon summarized the whole thing at the close of his testimony:

"Mayor Mitchel.—That will be a statement accounting for the method and purpose of the expenditure."

(Monsignor McMahon had promised to give a statement of what he did with the money.)

"Mr. Grout.—It is a copy of the statement you rendered to the archbishop. He says you appropriated the money to him and didn't account.

Witness.—I want to say that there was some suggestion that no report was made of my money (poor man!). I don't know—some report has come to me that I made no statement with regard to the money I received (and he was sick then!)—I want to say further, I made a report of all the moneys I received to the sisters and the expenses, to those who supplied the sums. I also made a report once a year to the archbishop and they are filed in his office, the reports of the money received in my office.

Acting Mayor Mitchel.—That is, accounting for expenditures?

Witness—Yes.

Acting Mayor Mitchel.—You might let us have a copy of those accounts covering this period.

Dr. McMahon.—I will let you have it."

Now, that is what Dr. McMahon testified; not that he had misappropriated the money for his own use, but that he had used it in the work of his office as supervisor of charities. He had, he felt sure, reported the uses made of it to the donor and certainly had reported it to the sisters and his superiors, filing written statements.

The record to which the mayor so glibly refers demonstrates the utter falsity of nearly every clause in the paragraph I read, except the one stating that the money was not paid to me, and since it

was not, why should the matter have been mentioned at all? It looks as if the mayor's sole purpose in referring to the matter was to traduce the dead.

A little while before he died Dr. McMahon left this affidavit. He had gone to Carlsbad. He was there fighting death, and he was so much concerned over this slander he couldn't bear to have it repeated. He wanted to deny it. This affidavit was taken before Will L. Louder, consul of the United States of America, Carlsbad.

Mr. Tully.—Is that the original affidavit?

A. This is the original affidavit with the seal of the United States on it.

Mr. Moss.—Is that one of the papers that you saved out of your desk?

A. That is the one paper that I cared more for than any other paper.

Mr. Moss.—You didn't want that to be lost or stolen?

A. No, it couldn't be replaced, and it has a sentimental value.

Mr. Tully.—Would it help you any if we read that affidavit?

Dr. Potter.—Very much indeed.

Mr. Tully.—If there are no objections, I will read the affidavit:

“Dennis J. McMahon, being duly sworn, the American Consulate, Carlsbad, Austria, desiring to give full answer to inquiries from New York, United States, deposes and says:

He is the Right Reverend Dennis J. McMahon, rector of the Epiphany Catholic Church, Second avenue and Twenty-first street, New York City;

That he is the supervisor of Catholic charities in the diocese of New York and has authority in matters pertaining to the Catholic charitable institutions there;

That at the present time he is stopping at Carlsbad, Austria, having left home for Europe April last;

That in the winter of 1906-7 he planned to organize more completely the educational work of the charitable institutions to the

end that every teacher in them might have a certificate from the department of education, also to establish a Catholic bureau for the after-care of children from the institutions. In order to develop those plans, he opened an office with suitable clerical force to centralize these and other important charitable works, he requested funds from the institutions to meet the increased expenses. At first it was suggested that while raising these funds a sufficient sum be secured to make an honorarium to Dr. D. C. Potter of the finance department, New York City, who had rendered valuable and long-continued services outside of his departmental duties, also and particularly to refund the disbursements incurred in connection with a set of photographic albums mentioned below. The latter part of the suggestion was finally adopted.

That these funds contributed by the institutions were used by deponent for the work of his office, a purely diocesan matter;

That at no place or time did deponent pay to the said Dr. Potter any sum of money except on one occasion, when payment was made for the actual amount of one thousand dollars, to cover the cost of the illustrated albums which were sent to Europe. This work was compiled and completed in all details by Dr. Potter. Deponent has already testified in court upon this subject where vouchers were presented. Dr. Potter received no money for his services or for any profit. It was well understood that his services were gratuitous. He was not offered or given anything beyond actual disbursements. Other than in this instance, deponent never paid said Dr. Potter any sum of money either directly or indirectly or to any one else for his benefit. In answer to a specific inquiry in which deponent is informed that among the vouchers of St. Joseph's Union, a private corporation receiving no money from the city of New York, though connected with the Mission of the Immaculate Virgin, there is a check dated in or about January, 1907, for the sum of \$500 with a memorandum accompanying the voucher stating in substance that the check was to be made part of a sum proposed to be raised on behalf of Dr. Potter, which sum the rector of the Mission of the Immaculate Virgin states was given to deponent. Deponent says that said \$500 was received and used by him in the diocesan work described above and no part of the said \$500 was either

directly or indirectly paid to D. C. Potter. Deponent says that in asking for about \$4,000 at that time, he stated the objects above mentioned \$500. While deponent may not have reported to the reverend rector in person the use of his contribution, he does actually report annually both to his superiors and to the superiors of all the contributing institutions the financial transactions of his office.

(Signed) DENNIS J. McMAHON.

Sworn to before me this 27th day of June,  
1910, at Carlsbad, Austria.

(Signed) WILL L. LOWRY, *Consul of the U. S. of America.*  
(With the consulate seal attached.)

Dr. Potter.— Please let me add that I don't care what John Purroy Mitchel says about me anywhere. It neither will affect my eating, sleeping, thinking, living or dying. I care very much for what he says about Dennis J. McMahon. I am reminded of a proverb — he that is first in his own cause seemeth just, but his neighbor cometh and searcheth him out. On the McMahon matter. I have searched out John Purroy Mitchel. He slandered McMahon; he slandered me.

Mr. Mitchel said, "The comptroller secured the resignation of this man, the examiner of private charitable institutions." By the way, he happily alludes to me as "This man Potter" with great frequency. I am glad he recognizes that I am a man belonging to the *genus homo*.

On June 7, 1915, a friend of mine, Mornay Williams, a lawyer in this city of reputation, a gentleman, for many years president of the New York Juvenile Asylum, who has known me forty years, wrote to Mr. Prendergast about certain matters. This is Mr. Prendergast's letter — it is a brief letter:

" DEPARTMENT OF FINANCE,  
MR. MORNAY WILLIAMS, June 7, 1915.  
27 Cedar Street,  
New York City.

DEAR MR. WILLIAMS:

Your letter of the 7th inst. has been received. I am very glad indeed to answer the questions you have asked me re-

garding the withdrawal of Dr. D. C. Potter from this department. Dr. Potter resigned from this department on June 4, 1910. He voluntarily tendered his resignation. I had never discussed the matter with him in any shape or form, neither had I discussed it with any one else. I had known for about a month that there was an effort upon the part of some of Dr. Potter's friends to have him accept another position in the city service. Consequently, the answer to your question is that Dr. Potter did not resign from this department as the result of any charges being made against him. Believe me,

Very truly yours,

WILLIAM A. PRENDERGAST,  
*Comptroller."*

That ought to be the end of Mr. Mitchel's slander on that point.

Mr. Tully.—Were you subsequently appointed to another position by Mayor Gaynor?

Dr. Potter.—Yes, but I had to take a civil service examination. Mr. Mitchel, in his statement to the universal earth and the Thompson Committee said, "There has been a persistent effort to discredit the commissioner of charities, to put him off the investigation that he was making of these private charitable institutions, to malign him, to slander him, to lie about him." How are you going to intimidate a man that goes around with a lot of detectives around him? And, how can you intimidate the mayor who goes about with a squad like a passing potentate. "In order that immunity from investigation and from censure should be secured for these private charitable institutions, the prime movers in that effort have been men like Mr. Hebbard, Father Farrell (Oh, you scoundrel!) this man Potter, this ex-minister and discredited city employee."

Mr. Kingsbury and the mayor have on many occasions not only in this particular instance but before the Strong Commission done me the honor to identify me in some way with the Reverend Father Farrell. I can stand it if he can.

On page 7858 of the record of the Strong Commission, John A. Kingsbury on the stand. Mr. Hotchkiss offered "to show by this witness (that is, by Kingsbury) the animus of Daniel C. Potter to him as evidenced by Potter's statement to Kingsbury." Mind you, I wasn't before the Strong Commission. There is no more reason in the world why I should ever have been identified with this trouble than King George of England should have been identified with it. I had nothing whatever to do with it. When I wasn't present, when I hadn't been summoned, they begin to pour out matter concerning me on their record.

On page 7859, the same matter is continued. Mr. Kingsbury had a great deal to say about giving me notice that my position in the ambulance board was abolished, and at that point, I turned around and threatened him. (That was to prove that I was a bad man.)

On the same page, there is a part of this very testimony and closely connecting me with Father Farrell and both of us together as having much feeling against Kingsbury. He continues to testify over the objection of Mr. Powers, who said, "Father Farrell has not been a witness in this case in any sense that you are entitled to go into any question of differences between these two parties." I hadn't been near the Commission nor called before it in any way.

Mr. Kingsbury says Father Farrell had denounced me in the public press for the non-acceptance of emergency cases in hospitals and told of the case of a man with his arm torn from the socket walking into a hospital (page 7860). On objection, Commissioner Strong stated, "The fact is there is apparently some friction between Father Farrell and Commissioner Kingsbury prior to the publication of the Farrell Pamphlets."

"Mr. Hotchkiss.—Well, I want to show an additional fact, that Father Farrell issued a statement, which, upon proper investigation he must have known to be false, and when its falsity was brought to his attention, he did not correct his statement, though it was published throughout the city."

Now, here are the facts in this case — June 9, 1914, Father Farrell and myself met several gentlemen at an impromptu luncheon in Brooklyn. In a haphazard conversation, the non-

acceptance of emergency cases in charitable departments came up. I told the story of a longshoreman with his arm torn from the socket and hanging by tendons going to a private hospital. The case was refused by the department of charities, because the man was able to walk in. I said, this illustrates the extreme hate in the department against private hospitals. A reporter, since deceased, was in the party and was interested in the story. I said plainly, this incident does not belong to this administration and must not be used, but it does represent in an extreme degree an underlying current against private hospitals introduced into the department in 1902 when the thing happened. The next day, June 10th, the Brooklyn Eagle had a story, part of it an interview with Father Farrell on the hospital question, attributing this story to him, and by inference, to the present time. The next day, June 11th, there was a hearing before Mr. Kingsbury, attended by a committee of the Hospital Alliance. Mr. Kingsbury recited the torn-arm story. Father Farrell rose up promptly and said it was not his story, that it had wrongfully been attributed to him, that it did not belong to Mr. Kingsbury's administration. He said he was glad of Father Farrell's frank disavowal. Many of those present have told me of this incident as did Father Farrell. I have a number of letters here from the gentlemen who were present who heard him make that statement. If I don't forget, Mr. Moss was present.

On June 15th, Mr. Kingsbury wrote Father Farrell a ten-page letter in which he charged Father Farrell with the torn-arm incident. Father Farrell replied, reminding Mr. Kingsbury of the public disavowal on the 11th.

On June 16th, the Tribune, the Sun and other papers published a letter of Mr. Kingsbury in which he says of Father Farrell, "You admitted the case did not occur during my administration. I regret to say, however, you did not apologize." This is a clear acknowledgment that Father Farrell had openly repudiated the story, and Kingsbury knew it. On June 19th, the mayor charges Father Farrell with doing a wrong; on June 24th, Father Farrell replied to the mayor, and, among other things, said, "I did not tell the story; it did not occur during this administration. You will find letters in the press from me covering

or reviewing this matter, one especially in the Standard Union of June 24th.

On August 12th, Mr. Kingsbury had a story in several city papers, including the Brooklyn Eagle, in which he again recited the torn-arm story, attributing it to Father Farrell. On August 13th, in the Eagle and other papers, Father Farrell, having grown weary of replying to this reiterated statement, replied, "Commissioner Kingsbury deliberately lies when he says I charged his administration with this particular inhumanity or that I failed to correct the impression." And then Father Farrell recites his disavowal.

On August 14th, the Brooklyn Standard Union and other papers carried the full story of Father Farrell and recited the incident from the beginning.

Now then, Father Farrell says, "On June 24th, I gave out an article published in many papers clearly showing the story was not mine, it did not belong to the present time, and yet Mr. Kingsbury ignores all this and charges me afresh with failing to correct the statement I never made."

Now then, after all this publicity and the letters to Kingsbury and the mayor, and Kingsbury's public acknowledgment, both before witnesses and in the press, that he knew this story was not Father Farrell's, on pages 7859 and 7860, Kingsbury, under oath, right back here only two weeks ago, aided and abetted by Hotchkiss, tells again the torn-arm story and charges it again to Father Farrell. Hotchkiss must have known it to be false. He did not correct his statement. You will observe that Kingsbury takes oath as a witness to something he never had personal knowledge of and that Hotchkiss makes a broad statement shown to be untrue. The outstanding fact is there never was a case of a more deliberate, wilful and senseless perjury. It is a crime on the public and on that Strong Commission, and, in the light of that, John Purroy Mitchel says that Father Farrell and I are lying about Kingsbury. Who is the liar?

When I asked Strong, at his Commission, by what right, moral or legal, he had tapped my telephone, had had men follow the maids leaving my kitchen door, he said, "Why, I never heard of it; I never authorized it."



Mr. Tully.—Who said that?

Dr. Potter.—Strong. Then, I said, some of these city representatives must have done it. The city representatives were Hotchkiss and Kingsbury sitting there. Kingsbury said, "I never heard of it." This is on the 14th day of April.

Mr. Tully.—Your wire began to be tapped, as far as you know, when?

Mr. Potter.—As far as I believe,—on March 1st. It is officially admitted that they began it on March 18th. On April 14th, Commissioner Kingsbury, sitting in the Strong Commission, in answer to my inquiry and Strong's interrogation, says, "I don't know anything about it."

Mr. Tully.—Did the mayor make any statement as to Mr. Kingsbury asking that your wire be tapped?

Dr. Potter.—Ah, that came out afterwards! I was coming to that in a minute.

Hotchkiss said he didn't know anything about it, but the newspaper reporters took it up and they ran right out. This is from the New York Times on April 15th:

"Commissioner of Charities John A. Kingsbury, in whose behalf the information alleged to have been obtained by wire-tapping being used, said last night, 'I know nothing about the matter. If any wire-tapping was done, it was done without my knowledge or consent.' " He said it first before the Strong Commission; he afterwards says it to the reporters. But, four or five days later, the mayor of the city of New York announced that the wires were tapped on information furnished by Kingsbury, that my wire was being used for criminal purposes. Who is the liar?

The mayor of the city of New York also made the statement, and I could find it by reading, if it were necessary, that I was an unfrocked clergyman. He went over to Philadelphia on November 12th or 13th and he delivered an address in Philadelphia in which he charged much of his sorrow and much of the tribulations of his administration to me, characterizing me as an unfrocked clergyman. The matter was re-telegraphed to the city

and was more largely printed in *The Sun* than in any other paper on the 13th. On November 14th, I wrote this letter to the mayor — this is a carbon copy of the letter I sent him:

“HONORABLE JOHN PURROY MITCHEL, *Mayor*:

Sir.—The *Sun* of November 13th, reports you as saying in Philadelphia something about an unfrocked minister and city employee named Potter. You evidently intended to refer to me. You have been misinformed. I was never unfrocked. Your statement has done me a real injury and a great injustice, though doubtless you did not intend to do just that. (This is last November, 1914.)

Your informants have probably reported the beginning of a dispute carried on some eighteen or twenty years ago, but the end of that controversy, through many ramifications, was settled in my church and in the courts and wholly in my favor. In several of the court cases, with substantial money damages. I mention this fact to make clear that I was entirely vindicated. I was never under the slightest ecclesiastical censure by my church, the only organization on earth having the power to unfrock its minister.

Very respectfully,

MYSELF.”

Mr. Moss.—Was that letter sent to Mr. Mitchel? Did he get it?

Dr. Potter.—That letter was sent to Mr. Mitchel. He got it, sure.

Mr. Moss.—You mean to say, I take it inferentially, that before he testified here, he had been informed by you of the facts in that letter?

Dr. Potter.—Not only so, but a friend of mine, seeing this, without my knowledge, wrote a letter to the mayor and asked if it was possible that he had made such a statement concerning me in Philadelphia. This is the reply:

“November 18, 1914.

DEAR SIR:

The mayor directs me to send you in reply to your request of the 16th inst. the enclosed typewritten copy of his address at Philadelphia on November 12th.

Very truly yours,

BURTON,

*Executive Secretary.*”

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And then follows the address of Hon. John Purroy Mitchel, mayor of New York City, before the Society for Organizing Charity, at Witherspoon hall, Philadelphia, to all of which I wish to say that the mayor was respectfully notified on the 14th of November that his statement was incorrect. On the 18th of November, he had his secretary send out a copy of his speech; in another tribunal, he made a statement similar quite recently, and he has made that statement here. I suppose he will keep on making that statement until he dies. He can't get but one idea into his head at one time, and when he gets it, nothing can ever change it. Who is the liar?

Senator Thompson.—It is our disposition to hear all of the people that have been mentioned in the statements before this Committee by the mayor, and give you the same privilege that we gave the mayor, which was an unlimited privilege to go as far as he liked; because he was the mayor of the city, we felt that being here in the city and enjoying the hospitality of the city, it was up to us to at least do that, and that was the only ground.

The statements of facts presented and brought out here by Dr. Potter emphasize that we are on a subject that this Committee was not constituted to investigate.

Now, I know a little something about charities — not much. I knew that there was a dissatisfaction among people who were interested in charity work, possibly independent people, something which is readily seen at Albany by a representative who is required to be there. It savors of power in and along charity matters; it savors of influencing legislation in Albany.

After two years' experience, I introduced a bill in the Legislature of 1915 requiring charity organizations to account once a year and file a statement in the office of the Secretary of State, showing what they received and what they received it from. That was amended and applied only to such organizations as received more than a thousand dollars in the year, passed by both houses and was vetoed. Opposition came from Mr. Wilcox at Buffalo, Mr. Homer Folks and men like that. There was no particular concerted appearance in behalf of the measure, and I didn't know anything about the details of the subject, but there was enough of it to impress me, and I passed that bill. That was in 1915.

Now, it appears here to-day in New York City there is a whole building located on Twenty-second street—they call it the Charities building—occupied by a hundred or more different societies which have interlocking directorates and are more or less cemented together, like the Charity Organization Society, the Sage Foundation, the American Red Cross Society and all those, and hundreds of others. The building is nicely located, as I understand, and nicely furnished and well officered, and it must cost considerable money to maintain.

The combination has large ramifications not only in the city of New York but throughout the State. I know that it is a fact that you can't sell a Red Cross stamp on the streets of the city of Lockport without getting permission from here, and a man is sent from here and paid a salary to superintend the sales. The local Episcopal or Methodist clergymen in the city of Lockport that would like to sell Red Cross stamps can't do it without it being supervised from this organization. That was told me by one of my own neighbors—I happen to have a few limited friends in the clergy.

Now, I have told you enough to show that I personally think that this subject ought to be investigated. It ought to be investigated from a standpoint of investigating the whole subject, fairly, thoroughly, to see what to do, to see whether or not there is such a thing that might be denominated a "charity trust," and, if so, whether or not they abuse the power that they have; and also to investigate, which they probably do, the various organizations which have direct contact with the objects of charity to see

whether or not they are abusing the trust which is reposed in them to expend money that the public give for maintaining charity work.

What I say all this for is to emphasize the fact, and to emphasize the correctness of the position of this Committee the other day when we tried to refuse to go into this subject. We can't investigate it thoroughly, we can't investigate it properly, and we ought not to be asked to.

I am not criticising. I don't want you to have the idea that I am criticising the investigation which is being carried on under the Moreland act. I have confidence in Commissioner Strong. He has limitations just the same as we have, in his investigation, and, within his limitations, he is doing just as near right as we can find out how to do, I think.

This is your question. It is up to you and the people of the city of New York. I don't know but I am glad that we have gone into it as far as we have. You have all had a hearing and you have had your chance.

I will tell you what I think about you and your staying away from a subpoena. I don't think that you tried to evade the service of process. I don't think you tried to get away from the jurisdiction of the court. I do think that you wanted to find out what the other fellow was going to produce before you went on the stand. I do think that you were trying to stay away until the other fellow showed his hand, after which you were not only willing to go but you wanted to. That is the way I figure it out, if that is any decision, which I haven't any authority to make here.

Dr. Potter.—The critics of the so-called Strong Commission, when they saw the partiality with which this work was being directed, wrote Governor Whitman and begged him to have appointed, if it was necessary, by legal steps or process, a legislative commission to go into the entire question of charity, not only examine the work of the State Board of Charities and the fiscal supervisor, but examine the local charities, the public charities and all of the private charitable institutions, all of these so-called eleemosynary institutions receiving public money. That was the purpose of the first letter that Father Farrell sent to the

Governor. May I say one other thing? I thank you a thousand times for your kindness.

This is the fact—I know the men and the women who are spending their money for these children's institutions and private hospitals that are bearing the burden, caring for the poor, are the people who are being criticised. They are doing the work. There are sixty-seven or seventy thousand free patients in the private hospitals per annum, the drift of somewhere around 35,000 children through the children's institutions. I wish I could talk to you about the children's institutions. If you imagine that children are staying in institutions forever, you are mistaken. The average time is much less than two years. The children who remain in institutions are children that you can't give away, children that nobody wants, children who are deficient or mentally backward, or else they have relatives who hope that when they are educated, they can make use of them for commercial purposes.

The good men and women, the best bankers, best merchants, best lawyers, Jews, Protestants and Catholics, are engaged in these private institutions. The people who are criticising them are giving money for the maintenance of a criticism organization. They haven't a dollar invested in an institution. They don't own a brick. They haven't got the care of a child or a sick man. They spend their money in getting a sufficient supervisory force to tell the other fellows that are doing the work how to do it.

They run bureaus. It is not only intended to supervise the present work but perpetuate itself. Let the children be taken out of the private institutions and scattered abroad through the State and the school of philanthropy will be called upon to drill, educate and fit from seven to twelve thousand inspectors, examiners, supervisors and meddlers at an expense for the poor taxpayer to settle.

Senator Thompson.—Is this body self-appointed and responsible to no one?

Dr. Potter.—Yes, and yet paid for out of the taxpayer's pocket.

Mr. Moss.—Are they organized for publicity?

Dr. Potter.—They don't breathe without publicity. Why, you will see in the papers that the Hon. Homer Folks was at the Legislature yesterday; he addressed the Governor about So-and-so; he asked him to appoint a commissioner; he whispered in his ear the name of the commissioner. The Hon. Homer Folks turned over in bed last night and expects to roll over to-morrow night.

Mr. Tully.—The Committee is so indulgent that I hesitate to make any further request, but I would like five minutes of the Committee's time to call one of the newspaper men as a witness upon a very important phase of this case. I will promise to conclude with his testimony inside of five minutes, if I may have it.

Senator Thompson.—I want to finish what I had to say. I don't want to criticise this administration, and I don't want to criticise the New York police department, because I have not had sufficient facts before me to justify any criticism if I should make it. I think this city administration has tried to improve on previous administrations as they have seen the light. I think, as the mayor sees it, that he is trying to do what is right. However, I can't excuse miscellaneous tapping of telephone wires, which is the real issue before this Committee. I don't believe in it. I don't think that any police department or any city administration should have that power to tap a telephone wire on suspicion. I don't see how the mayor of the city can at one and the same time tap telephone wires and still be pointing to the light of the statue of the Goddess of Liberty here in the harbor. That is my idea. But, as I said before, the question is big, and it should have a separate investigation of its own. We can't do it. That is what I want to emphasize. You may all be right and you may all be wrong, as far as I know.

Mr. Moss.—There are five policemen in the room whom I have had in attendance because I don't want to lose sight of our purpose, that is, to investigate the telephone taps. These are the five officers who have had charge of these taps, and I hope when you arrange for an adjournment, that your announcement will be so plain that they can't misunderstand that we want them.

Dr. Potter.—On last Sunday, three of the wire-tappers started to call at my house. I met them just outside.

Mr. Tully.—Do you mean the policemen?

Dr. Potter.—I mean three of the policemen who said that they were wire-tappers, these same fellows that are here and were here yesterday. They said to me they had come to see me because they didn't want any hard feeling. They didn't want me to feel that they had done something that was mean. I told them I was sure that they had done nothing they hadn't been ordered to do.

But, I knew the object of their coming to me, as well as anybody. It was to hear my voice speaking so that they could testify to the quality of the voice. I took pains to say to them right off, "Did you see the testimony of a man named Wing the other day who says he has tapped ten thousand telephones? He is their star and expert, and he testified in court that he never is sure of a voice on the phone and he will not testify as to the voice because of the metallic change, unless he personally knows the man, knows his speaking voice and 'knows his telephone voicei'" They came as a sort of post-mortem performance to get my dead voice.

Father Farrell.—I would like to also state that these men with their chief met me after coming out from the grand jury on last Friday. They surrounded me with their heads all close to my mouth. I knew immediately what they were trying to do. I said, "Imitation is the sincerest flattery. I have two assistants, one with me for ten years and the other eight. Most men who live together for that time try to imitate not only the action but the voice of their superior," and I said, "you couldn't tell my voice from my two assistants," simply to throw them off. They did the very same thing with me on Friday.

Mr. Tully.—You mean it is your belief that they tried to get you to talk so that they could testify that they had heard your voice in the month of May and recognized it as the same voice that they had heard over the telephone on the 24th of March?

Father Farrell.—I merely want to illustrate the clumsy method of the police, because they might call up my office, and, by giving some indifferent excuse, get me.



Mr. Tully.— They wanted to have your voice face to face with you.

R. K. WELLER was called as a witness, and, having been duly sworn, testified as follows:

Q. (By Mr. Tully).— Your name is R. K. Weller?

A. Yes.

Q. And you are a reporter for the Brooklyn Standard Union, are you not? A. Yes.

Q. And you have been so engaged for a period of several months past? A. I have been with the Union for about a year now.

Q. Now, Mr. Weller, if there is anything in my questions to answer which might embarrass you with your newspaper, don't hesitate to refuse to answer. Did your newspaper print an editorial about the wire tapping of the telephones of clergymen in the city of New York on the 19th of March? A. That was on the 4th of April that they printed the editorial.

Q. Did they print a story on the 19th of March with respect to wire tapping? A. I am not sure about that date, Mr. Talley, because I haven't been able to get the paper.

Q. What is your best recollection as to the first time your paper printed a story about the telephones of clergymen being tapped? A. I wouldn't want to say, Mr. Tully, without seeing the paper.

Q. There was an editorial published on the 4th of April, wasn't there? A. Yes.

Q. Was that editorial based upon any report that you had made to your newspaper of interviews that you had had with any of the clergymen whose names have been mentioned in these proceedings? A. The editorial wasn't based upon that, the editorial was based upon information that I took to my editor. It was what I suspected from the conversations that I had heard when I was assigned to report the charities investigation.

Q. What I want to get at as near as possible, Mr. Weller, is approximate date of the conversations that you overheard which induced you to report to your newspaper that these clergymen had stated that the wires were being tapped. Can you give us that date? A. I would say it was a week before the editorial was

printed, because the editor told me to look into it, to see if I could find anything about it and report to him later.

Q. Would that date be in the latter part of the month of March?  
A. I should say it was around the 20th or 23d of March.

Q. Did you interview any of the clergymen on that subject at or about that time? A. I don't think you could call it an interview.

Q. Did you try to interview them? A. I did.

Q. Did they indicate to you that they believed the wires had been tapped at some time previous? A. Not when I first talked to them.

Q. Did they decline to make any comment upon that subject?  
A. They did, yes, sir; they did say they didn't want to say anything about it yet.

Q. That is, they didn't want to have any publication of it?  
A. I suppose so.

Q. Did they indicate to you that they believed the wires were being tapped? A. Yes.

Q. And who were the clergymen you talked with on that subject and who indicated to you that the wires had been tapped? A. Father Higgins was the first one, and all of them after that.

Q. Father Farrell? A. Yes.

Q. Monsignor Dunn? A. Yes, I had an interview with Monsignor Dunn either on the 12th or the 16th of April.

Q. Did he tell you then that he believed his wire was being tapped? A. Yes. He explained the plants that he had arranged and told me what they were. Some of them I couldn't print.

Q. When do you fix that interview? A. I fix it by the story that is in the paper. It was the Saturday before the Sunday that this story appeared.

Q. Did you say "plans" or "plants"? A. "Plants" is what they called them.

Q. Plants for what? A. Traps, in other words.

Q. They discussed the plants that they had arranged, that they were to speak over the telephone on matters which they expected would be taken by those who heard them? Is that what you mean? A. And then they explained them to me and told me what they were, but wouldn't let me print it.

Mr. Moss.— That is, they were going to trap the police?

A. I don't know that it was the police.

Mr. Tully.— Well, whoever was listening.

Senator Thompson and members of the Committee, I want to express the sincerest thanks in behalf of the people whom I have represented in connection with this matter to your Committee and to its counsel and associate counsel, who have given us full and complete opportunity to endeavor to repudiate the base calumnies that have been hurled against us and against things that my clients hold dear and believe are to the best interests of the people and the citizenship and the good government of this city. If you in the course of your investigation have done nothing else, you have at least shown that you are fair-minded and willing to give everybody in this matter an absolutely square deal as you have given us.

Senator Thompson.— With the exception of the examination of the police who are in the wire-tapping squad (is that what you call them?), is that all that any one desires to have us hear in relation to this charities matter?

I don't want to have anybody construe from what I have said that I am trying to take sides in the charities matter; I am not. I just want to call the attention of the people here in New York to the fact that you have a problem here. There is difference of opinion about it which, to my mind is fundamental, and that is all. I don't want to decide, I couldn't decide that controversy, nor who is right, nor anything else; but I do insist that you have all a right to be heard, and I do insist that you have a right to find a place where you can congregate and talk confidentially with each other if you want to.

We will suspend 3 p. m.

MAY 26, 1916.

SECOND SESSION.

Called to order at 3.10 P. M. by Senator Lawson.

GEORGE YUNGE came to the stand and was sworn by Senator Lawson:

Mr. Moss.— Mr. Yunge, you have charge of a squad of policemen assigned to a special work, haven't you?

A. I have.

Mr. Lamar Hardy.— I understand that Senator Thompson has subpoenaed the original records of conversation that the officers have taken, which are now in the hands of the district attorney of Kings county, and I understand they haven't been produced as yet. In view of that fact, I was going to suggest that the examination of these officers who took these conversations be adjourned until those records are here. They are records that were taken by the officers themselves and typed by them, and there is only one original, and I think it only fair to them, if they are going to be examined here as to the conversations which they overheard on the phone, that they have before them the original conversations, typed by them. I think that is a fair thing to do.

I present these men to you. I want you to examine them to your hearts' content, but I want to have before them, when they testify as to the conversations, the exact conversations which they took and which are now in the hands of the district attorney.

Mr. Moss.— Mr. Hardy is anticipating an investigation which may not arise in the way he thinks it will. I am sure the interests that he represents will be treated in absolute fairness, but we want to make time and we can make time without injuring any interests that Mr. Hardy is speaking for.

Senator Lawson.— The Chair will state for the record that the Chairman of this Committee is now conferring with the district attorney of Kings county for the production of the exhibits before this Committee. If the counsel for the Committee desires to interrogate these witnesses preliminary to the production of these

records, for that purpose the counsel will proceed with the preliminary examination.

Mr. Moss.—What is the work of the squad that you supervise?

Mr. Yunge.—To get conversations relative to criminal activities of anybody.

Q. To get conversations from the telephone system, is that right? A. Yes, sir.

Q. And do you men do anything else? A. We have not, with the exception of myself, been doing anything else lately.

Q. How long have you had that squad? A. I have had that squad a little over two years.

Q. How long has such a squad been in operation? A. About four years.

Q. Were you in it when it was organized? A. I was.

Q. Under what commissioner was it organized? A. Commissioner Waldo.

Q. Are you possessed of the means in your squad for listening-in on any telephone wire in the system operated by the New York Telephone Company? A. I am.

Q. Does your squad work night and day? A. It depends upon what they are doing and what kind of a case they are working on.

Q. Who is your immediate superior? A. Well, Inspector Cray or Inspector Feurer.

Q. Anybody else? A. I also work under the supervision of the deputy commissioners and the police commissioner.

Q. All of them? A. Yes, sir.

Q. To whom do you make your reports? A. I report to any one of them at all; sometimes to the police commissioner direct, sometimes to the deputies.

Q. Is there no regulation? A. Yes, sir. I report to the police commissioner regularly. He knows just what I am doing at all times.

Q. Do you report to him in writing? A. Yes, sir.

Q. Regularly? A. Yes, sir.

Q. Do you report to the police commissioner regularly and in writing concerning every call that you make or listen-in on? A. I do.

Q. Is there a written report of the time the wire and the conversation is supervised? A. Yes, sir.

Q. Every one in writing? A. Yes, sir. They are typewritten and the commissioner gets a copy. That is, it is not a report written of what I did, but a copy of what we overheard for the time and date.

Q. The commissioner has stated that those reports are destroyed. What do you know about that? A. I don't know anything about what the commissioner has stated.

Q. Now, you say that you may work at night or you may not. How is that arranged? A. Well, it depends upon just what kind of wires we are supervising.

Q. Will you explain that? A. Well, to explain that, I have to show the workings of the police department, and I don't think that would be proper in public.

Q. Oh, you can do that without exposing any police secrets. Draw upon your imagination. A. I can't draw upon my imagination. I prefer to give you facts.

Q. Well, tell us how you determine whether a case is to be watched at night or not. A. If the people using the wires would use the wires at night.

Q. Then if there is a night service upon the wire that you are watching, you cover that wire at night? A. Yes, sir.

Q. Do you do it in shifts? A. Yes, sir.

Q. Is it common for you to supervise the wires at night? A. Well, it is irregular. Sometimes we do it, sometimes we don't.

Q. Do you do this operation of supervision in one place or do you do it in various places? A. In one place.

Q. That is, you have a headquarters? A. Yes, sir.

Q. You have a headquarters where the mechanism is assembled, by which you can operate, and all your work is done there? A. Yes, sir.

Q. Is that headquarters so situated that it is under the immediate supervision of any superior officers? A. It is under the immediate supervision of the police commissioner.

Q. But it is so located that the police commissioner can walk into it and see what is going on? A. He has never yet.

Q. Well, who has yet? A. No superior officer has walked into that place yet.

Q. Why not? A. I don't know.

Q. No superior officer has gone into the place where you men listen-in? A. No, sir. The only time superior officers went in there was prior to renting the room.

Q. Then your word is taken for everything — is that right? A. Yes, sir.

Q. Now, I want to get this correctly and accurately. Do you mean to say that no officer of a higher rank than yourself has ever gone into that room? A. No, sir.

Q. You mean that is the truth? A. Yes, sir.

Q. What is your rank? A. I am a sergeant, temporarily assigned as an acting detective sergeant of the first grade.

Q. Now, how many men have you? A. I have five men besides myself.

Q. Did all of those men testify in the Strong Investigation? A. No, sir.

Q. Did all of those men listen-in in what I might call the Farrell-Potter matter? A. They did not.

Q. How many of your men listened-in on that business? A. Four.

Q. Who is the other man? A. A man by the name of Thomas Greco.

Q. There are five besides you? A. Yes, sir.

Q. Well, is your room where you work in such a place that the commissioner of police could easily enter it? A. It is.

Q. Is it in police headquarters? A. No, sir.

Q. Is it some distance from police headquarters? A. It is.

Q. Is it a building where there are superior officers? A. No, sir.

Q. It is not? A. No, sir.

Q. Then it is not in a station-house? A. I decline to answer that.

Q. Well, I have asked you whether it is in a building where there are superior officers, and by that I mean lieutenants and captains. A. It is not.

Q. What measures, then, do you know have been taken by the

police department in its superior heads to supervise the work that you are doing? A. The only way that I see is by taking conversations and acting upon them and verifying them in that way.

Q. Well, they rely upon you entirely, don't they? A. They rely upon the statements that I give them and the subsequent action is taken from what those statements contain.

Q. Did any police officer of higher rank than yourself listen-in on any wires? A. No, sir.

Q. Now, this report that you made to the police commissioner, does it show the names and the hours of service of your different men? A. No, sir.

Q. The police commissioner doesn't know, then, what men are in that room at any particular time? A. He does if he asks me.

Q. Well, how often does he ask you? A. Regularly.

Q. He asks you how many men are there? A. Yes. Well, he might spring on me, "Who is working now?" or "How are they working?"

Q. Does he do that regularly? A. Yes, sir.

Q. How often? A. Sometimes once a week; sometimes oftener.

Q. Well, when he asks who is working or how you are working, does that include the day or the week? A. Well, my reports that I give to the police commissioner show that my men are working on the reports. The reports speak for themselves.

Q. Well, of course, the reports go in showing what a particular man has heard, but that is the only way? A. And those reports have time on and dates.

Q. But the way the commissioner knows the men are working and who the particular men are working is by looking at the conversations that are reported in? A. Yes, sir.

Q. That is the only way? A. Yes, sir.

Q. You don't keep a blotter, do you? A. No, sir, I don't keep any blotter.

Q. Well, don't you report to the head of the detective bureau? A. Yes, sir.

Q. Do you report anything like blotter information to him? A. No, sir; I don't have any blotter.

Q. Do you have a book or a record showing the cases that are referred to you? A. The cases referred?



Q. Yes. A. No, sir; I haven't any book of that sort.

Q. Well, now, let me understand this. Commissioner Woods stated the other day that there were about so many wires under supervision. I won't put it on the record how many, but a certain number of wires were at that time under supervision. Now, I want to know if you have a book or a record from which the commissioner could determine without asking you what wires were being examined on any particular day. A. He has.

Q. What is that record? A. That book is a record when a wire is placed on—the date, time, name and address, and the small particulars from my memorandum are placed in that book, and when the wire is discontinued it is put in that book, and that is the only book I keep.

Q. Does that book show where the wire is tapped? A. Sometimes it does; sometimes it doesn't.

Q. It is irregular? A. It is an irregular book, but merely to let us know what wires we have on.

Q. Do you keep that book? A. I did, yes, sir.

Q. Is it your private property? A. No, sir.

Q. Did you ever say it was your private property? A. No, sir.

Q. Did you ever decline to produce that book upon the ground that it was your private property? A. No, sir, not that book?

Q. What book was it? A. A small memorandum book I had in my pocket that had private notes in with small data concerning different wires I had put on, and from that book I entered it into this larger book that is kept for police information.

Q. And you refused to produce that book at the Strong inquiry, didn't you? A. No, sir; I refused to turn over my personal memorandum.

Q. You refused to produce that book for inspection? A. No, sir. I offered to turn that book over to Mr. Bowers and he said he didn't want to see it. I offered that in evidence to show him so that he could copy what he wanted in reference to the information at hand, but my private memorandum, I told him, I wouldn't give him.

Q. Where is the book which shows the cases in which you are working? A. The second deputy police commissioner has that book.

Q. When did you turn that book over? A. I guess he has had that about two weeks or possibly longer.

Q. Why did you give it to him? A. Because he asked for it.

Q. But up to that time you had kept it yourself? A. I did.

Q. What do you keep your record in now since that book is turned over? A. Well, I haven't had any record to keep.

Q. You are not supervising any wires now? A. I am supervising.

Q. Why haven't you a record to keep if you are supervising? A. I haven't any new ones to put on, and that is only relative to new wires to put on.

Q. That simply shows the number of the wires that you have been ordered to supervise? A. Yes, sir.

Q. Where is there any book stating the conversations that you have heard? A. On this particular matter?

Q. On any matter, regularly. A. There are some uptown in the commissioner's hands, some conversations on different wires.

Q. Uptown? A. Yes, sir, in the police headquarters — second deputy police commissioner.

Q. Why were those records made? A. Those were for future memorandum, for police reasons.

Q. It isn't a regular practice, then? A. It is a regular practice when I have to get information concerning some criminals that I want to keep information later on.

Q. For that particular case? A. For that particular case.

Q. But you had no system of recording what you have heard in every case and preserving it, have you? A. No system, no, sir.

Q. Don't you preserve the conversation which you have deemed to be important in every case where you have taken such a conversation? A. Sometimes I do.

Q. Sometimes you do and sometimes you don't. Now, who decides whether you shall enter it or not? A. Myself.

Q. Nobody gives you instruction on that? A. No, sir; I turn the copy over to the police commissioner and if I think it is going to be useful for future information I keep a copy.

Q. Really, the responsibility and the operation is yours? A. Yes, sir.

Q. How long have you had that unbounded authority? A. A little over two years.

Q. How long have you been in the department? A. Pretty nearly fifteen years.

Q. You have been a policeman for fifteen years? A. Pretty nearly. November 26th it will be fifteen years.

Q. How long have you been a detective? A. Ten years.

Q. How long a detective-sergeant? A. Since the rank was created under Commissioner Bingham. I was promoted regular sergeant about five years ago. I have been in the detective bureau practically ten years.

Q. Have you ever listened-in on a wire, or have any of your men listened-in on a wire, without direction from anybody? A. None of my men in the last four years ever listened on any wire unless he was properly authorized.

Q. What do you mean by "properly authorized"? A. A form that was made out and submitted to the police commissioner and the number of the wire and then sent to the telephone company.

Q. That is the form that we have had before us which goes to the telephone company? A. Yes, sir.

Q. We understand that that is a rule of the telephone company, that they won't recognize your position unless there has been that authorization. A. Yes, sir.

Q. When a wire is given to you to listen-in on, from that time to the time when you are ordered to discontinue do you listen continuously? A. Most all the time that we are there.

Q. Well, are there times when there is nobody there? A. Yes, sir.

Q. What are those times? A. When we don't cover a wire or don't deem that wire important enough to cover nights, we are not working nights, and then that wire is not being listened on at that time.

Q. Well, now, we will suppose that you are put on a wire on Monday and you get orders on Saturday to discontinue. Is that wire watched continuously from Monday until Saturday? A. It depends upon the nature of the wire, what the inspector gets over that wire.

Q. Well, suppose it is a downtown wire in a business building. Is that wire watched continuously during business hours? A. During business hours it will be watched, but not continuously.

Q. But continuously during the business hours? A. Yes, sir.

Q. There is someone on all the time? A. Yes, sir.

Q. How do you know when a message is going to come on that wire? A. Well, it depends on the two systems we have. Either the wire is continuously on your ear, so that you hear it, or you have it laying on the table and there will be a slight click, which would tip you that the information is coming.

Q. Now, you may have an apparatus upon your head, in which case you learn almost automatically that the wire is in use, but if you get tired of wearing the thing on your head, there is a little mechanism which you put on the table and it clicks, and what do you do then? A. We pick it up and listen to what is going on.

Q. You may be on the other side of the room. A. We don't often leave the table all at one time. There is somebody there.

Q. When this wire is in use, do you listen to everything that goes over the wire? A. We do.

Q. You hear every message? A. Unless we happen to miss something.

Q. But so far as you can, you hear every message? A. That is right.

Q. Do you keep a record of every message? A. No, sir.

Q. Why don't you? A. Because we record only what is relevant to the matter on hand.

Q. How do you know that? A. When we put on a certain wire, we look for certain objects, and anything that doesn't relate to that there isn't any notice taken of it.

Q. Who instructs you as to the object? A. It depends on who ordered on the wire. Whoever ordered the wire on I get my instructions from, unless we had information on a hangout or something of that sort; then we know what is wanted there without being told, but on special occasions of putting on a wire and we don't know, we have to be informed.

Q. Then you determine, sitting there in the room, what conversations ought to be reported and what not? A. No, sir, not "ought" to be—what should or what we would be expected to get information on on a certain subject. Anything that is irrelevant we don't bother.

Q. Well, you determine what is irrelevant? A. No, sir, the

men determine that, because I tell them what my orders are and they use their judgment.

Q. Well, you are the ranking man in that room? A. I am, yes, sir.

Q. Those men are less than you are in the police department?

A. Well, we all rank as first grade detective-sergeants.

Q. But you are in command? A. I am in command.

Q. And any man that happens to be listening is the judge for the time being of what to pass by and what to report? A. Yes, sir.

Q. You yourself don't hear everything in every case? A. If I happen to be in on a case and I happen to be down there and staying there, I will put on a cup myself and listen, but as a rule I have been pretty busy on other work and I don't have much of an opportunity to listen. In fact, I didn't listen-in on any of this work.

Q. Then, each man that is sitting-in on a wire is the judge of what to remember and what to forget? A. Yes, sir.

Q. And he can forget, can't he? A. Any man it is possible with.

Q. But it goes out of his mind if he doesn't think it is important enough to put down? A. It does.

Q. Now then, I wish you would give us an idea of how a case is given to you to work on. I don't ask you to expose any case, Mr. Yunge, but I want you to show how the system operates. Now, supposing the first deputy has some case that he wants you to work on, just tell me what he will do. A. For instance, if I am told — this is merely citing an instance — if I were told to put on a certain wire for a poolroom, I would make out an order and have that wire put on, and then I tell the men I want poolroom information on that wire, and that is all they are looking for. Incidentally, if we get anything else relating to a crime or of a criminal nature, we also make a copy of that. We have had a wire on for poolroom information and we have gotten other gambling information or something else.

Q. But the police commissioner tells you what to look for? Just imagine — 42 Henry street, which you suspect of being a poolroom. Then you know it is poolroom information he wants

and you listen on that wire and the "Hellos" and "Howdy-do's" you don't bother with, but when they say such and such a horse — A. "Twenty to one on this one" — we make a copy of that and we get busy.

Q. Well, when the Commissioner — we will suppose it is the first deputy — tells you to do that, does he give you a paper directing you to listen-in on 42 Henry street for poolroom information? A. I don't believe he ever gave me a paper, but he might have, but generally my orders are verbal.

Q. Do you then enter, "Listen to 42 Henry street, poolroom?" A. I enter in my small book just the telephone number and the address, and I don't say anything else in that small book.

Q. Do you have anything whatever which shows what kind of a place you are listening on? A. Yes, sir, that big book that the second deputy has.

Q. Now, you do get poolroom orders, don't you? A. We do, yes, sir.

Q. That is, if a place is suspected of being a poolroom, you occasionally get an order to listen-in on that? A. Yes, sir.

Q. Now, we have been furnished — this has been stated before but I will put it on the record here — we have been furnished with a list covering eight months with approximately three hundred fifty taps in the entire city of New York — I should have said eighteen months instead of eight. How many of those taps were poolroom cases — about? A. I would have to go over the entire list to tell you that.

Q. Any more than twelve in the whole eighteen months? A. I couldn't tell.

Q. Now, think a minute. Any more than twelve in the whole eighteen months? A. I couldn't tell you unless you let me look over the list.

Q. I want to get your idea of how this thing operates. A. I understand you, but to give you any definite number, I would have to go over the list. I couldn't tell you from memory, offhand.

Q. It has been stated publicly. A. My memory couldn't tell you positively just how many wires are for poolrooms.

Q. Leave the list entirely out of question. Remembering that

you do tap wires for poolrooms, have you in eighteen months tapped more than a dozen wires for suspected poolrooms? A. I don't know.

Q. Now, there are some cases where you tap disorderly houses, aren't there? A. There might be a few there. There wasn't very many of those. There was very few of those, a good deal less than the poolrooms.

Q. Yes. Well, when you have been asked to tap-in on poolrooms, have you been given any special reason why you should go in on any particular poolroom, just to get poolroom information? A. Just poolroom information?

Q. And why any particular poolroom was selected — do you know that? A. No, sir.

Q. No superior ever told you that? A. No, sir.

Q. Nor any particular reason why you should listen-in on a particular disorderly house — you simply took what your superiors told you to do? A. Yes, sir.

Q. And the same with gambling houses? There are a few cases where you have listened-in on gambling houses. You don't know why you haven't been asked to listen-in on more? A. To see if they are doing business.

Q. Exactly. And you could very easily determine by listening on the telephone wire of a gambling house whether it was doing business? A. Yes, sir.

Q. Now, you haven't had as many of those as you have had poolroom cases? A. No, sir.

Q. Do you know why? A. I couldn't tell you.

Q. You simply do what you are told? A. Yes, sir.

Q. You haven't anything to do with the system of cutting in outside of the telephone circuit? A. No, sir.

Q. Now, when you get an order to listen-in on a particular wire, do you enter in your book who it was that gave you the order? A. Yes, sir.

Q. Whether the commissioner himself or the first or second or third or fourth or fifth deputy? A. I always do in cases where there is a wire which I don't understand why it is put on.

Q. Well, supposing it isn't a case where you don't understand. A. If it is a case I understand, I put my own name down in

the column "By whose order," but if it is a wire from one of the deputies or the commissioner or whoever orders the wire on, I put that name down.

Q. Would you be able now to go back for two years and pick out any particular tap that you were asked about and tell what particular superior officer asked you to make that tap? A. That is under reference?

Q. Leave these cases out. Supposing I or someone should ask you to go back two years to the case of John Smith, 42 Henry street, and tell what official ordered you to make that tap, could you give it to us? A. From a record, yes.

Q. What record is it in? A. The record in the second deputy's office.

Q. That would show the particular official? A. Yes, sir.

Q. Do you ever put on a tap at the suggestion of any one of your own rank? A. No, sir, it comes from the inspector — well, the lowest rank I have ever put a wire on was for a captain.

Q. Why did you put it on for a captain? A. He requested me to put on a wire. He was an acting captain and he knew of this arrangement we had, and I referred him to the inspector and then I received my orders from the inspector.

Q. Was that inspector in charge of the detective bureau? A. Yes, sir.

Q. Now, when a commissioner tells you to listen on a wire and tells you the nature of the case, how much does he tell you about the case? A. Just gives me a bare outline.

Q. A bare outline? A. Yes, sir.

Q. What do you mean by a bare outline? A. Well, he just tells me a few words, but nothing particular — just a few words to give me an inkling of what he wants me to get.

Q. Just an inkling? A. Yes, sir.

Q. Then you have to piece that out by your own intelligence? A. No, sir. A detective is supposed to know pretty nearly what is going on throughout the city, and if I get a certain wire on a certain subject, as a rule I know something of what is wanted on that wire from the papers, and if I haven't that knowledge, I request further information.

Q. Well, really, it is a matter of your judgment; the judg-



ment that George Yunge has controls this business — isn't that it? A. In what respect.

Q. All respects. A. No, sir, not all respects. I am under orders.

Q. Well, so far as applying intelligence is concerned, working out the particular case and learning the outlying facts lies with you. A. The outlying facts rest with me, but the real facts of recording conversations rest with the men that hear them.

Senator Thompson enters room.

Senator Thompson.— Now, the corporation counsel called my attention this morning to the fact that in giving the testimony of these police men — what do you call them, members of the wire-tapping squad — that supervise these wires, it would be quite necessary to them to have their original notes before them if they were asked to swear to the truth of the notes taken and read by the mayor, read into our record, and I can see how they couldn't testify at all to any copy that could be made, as they were taken in longhand, and really a witness would be at a great disadvantage to be examined from the copies.

Mr. Moss.— The originals in longhand are not here.

Senator Thompson.— No, they are in the hands of the district attorney of Kings county.

Second District Attorney of Kings County.— No, they are not.

Senator Thompson.— Well, that presents a different question. We will let Mr. Hardy make his statement first.

Mr. Lamar Hardy.— These officers take down these conversations on a slate in a sort of shorthand fashion. They transpose their notes on paper in longhand and then they copy the longhand on a typewriter themselves. The longhand notes are destroyed and the conversations as reported and as typed by them are now in the hands of the district attorney of Kings county.

Second District Attorney of Kings County.— There are certain original typewriter papers that were produced as exhibits for the grand jury and are now part of the minutes of the grand jury of Kings county and are now in the hands of the district attorney of Kings county.

Senator Thompson.—Mr. Hardy asked for those to be produced.

Second Assistant District Attorney of Kings County.—Pursuant to the subpoena sent to Judge Lewis, who desires to express his compliments to the chairman and State that because of his business at this time he couldn't appear personally, he has sent me here as his representative, I being one of his assistants, to state to you that you have directed under this subpoena the production of certain papers that were used in the investigation as to wire-tapping before the grand jury of Kings county. These documents, typewriter documents, were produced before the grand jury marked as exhibits, and have become a part of the grand jury's minutes, and I am directed to state by Judge Lewis that he can not produce those papers except in accordance with the provisions of the Code of Criminal Procedure.

Mr. Moss.—You mean by an order of the court? A. By an order of trial court, duly had under the sections of the code.

Mr. Lamar Hardy.—Mr. Chairman, it was my understanding that this Committee had the same authority to have those documents as the district attorney, and I don't care how you get them, but I want them produced here if you propose to ask these witnesses about the conversations they took.

Mr. J. Frank Smith.—If those are typewritten copies as a result of slate writing and as a result of longhand writing and as a result of typewriting, and those are before the grand jury of Kings county, why they should be here any more than the mayor's should.

Mr. Lamar Hardy.—Well, they have identification marks on them, and these very men that took the conversations typed them out.

Senator Thompson.—Now what do you say, Mr. Moss, in construing that section of the code in reference to the stenographer's minutes, as to whether that covers the exhibits?

Mr. Moss.—I think it does. I am familiar with the situation as it arose before, where I had official connection with it, and

we always guarded the exhibits as part of the testimony. If that position is taken, it seems to me it is a good position, but it seems to me, back of that, that we are arriving at a difficulty before it is necessary. Now, I haven't asked any questions yet that requires the officers to state any conversations, and I may not?

Senator Thompson.— Well, of course, the mayor came here and he not only asked but he insisted on putting into our record these conversations, which we permitted him to do.

Mr. Lamar Hardy.— A part of them.

Senator Thompson.— Then I felt it was a duty of the Committee to permit any one who was mentioned in there to be heard, which we have done. Now, if they who came called forth anything new, then I think it would be just as much our duty to hear the mayor again, if he wanted to be here, as it was our duty to hear them, and they have brought something new in by denying the correctness of these conversations. Now, if the mayor wants to be heard, or if the corporation counsel wants to be heard on that, I think it would be our duty to hear them.

Mr. Moss.— We haven't reached that point yet. The mayor produced a typewritten copy of these alleged conversations under such circumstances as gave us to understand that they had been made by a multiple method, and he was producing one of the original typewritten copies, of which we may assume another set is with the district attorney. He alleged that these were the true reports of those conversations—the mayor did. Now, until somebody on behalf of these police officers of the mayor comes in making application or requesting to be heard anew, we haven't reached any position we have got to decide.

Mr. Hardy.— I only wanted to warn you in advance that if you proposed to ask these officers of the police about the very conversations, then they ought to have before them the conversations that they took down and which they have typewritten and which are now in the possession of the grand jury of Brooklyn.

Mr. Moss.— One of those is in the possession of the mayor.

Mr. Lamar Hardy.— Not at all.

Senator Lawson.—Let me ask the corporation counsel of this city if the minutes produced and read by the mayor are duplicates of the copy of the minutes in the hands of the district attorney of Kings county.

Mr. Lamar Hardy.—I haven't any doubt that they are, but they don't bear the identification marks of the men who took the conversations. I don't care about them except if you ask a particular man if such and such a conversation took place on such and such a date and if he took it.

Mr. Moss.—We haven't reached that point yet or brought it up yet.

Senator Thompson.—Well, if you do reach that point, I think Mr. Hardy is correct in his position, but if you haven't gotten to that, we won't take it up.

Mr. Lamar Hardy.—Well, I am only asking the production of the records in the hands of the district attorney of Kings county at this time.

Mr. Moss.—Let me quote the mayor's testimony on this point:

“Q. I would like to ask a question right here because I want to keep this record straight. The mayor has said several times that he has facts here. Now, I want to know whether the matters that you intend to read are original memoranda of those conversations? A. What do you mean by original memoranda?

Q. The memoranda that were made by the persons who say they heard the conversations. A. These are copies of of original memoranda made by these persons.

Q. Who made the copies? A. They were made, I believe, in the police department.

Q. Well, if you don't know those facts, how can you say they are the facts that you have? A. Because I have the verification of the accuracy of these copies from the police commissioner.

Q. How have you the verification of accuracy? A. By his statement to me.”

Now, the only statements of conversations that are in the record are the statements read by the mayor and vouched by him in this testimony I have read to you.

Now, Mr. Witness, when you take these conversations that come in on the wire, how do you take them — by what method do you take them?

Mr. Yunge.— We have a slate.

Q. A slate. What kind of a slate? A. An ordinary slate, school slate.

Q. It isn't a silicate slate, but a real stone slate? A. A stone slate.

Q. With wood around it? A. Yes, sir, with wood around it.

Q. And a stone pencil? A. A slate pencil. Sometimes it is all stone, sometimes we have a pencil with a little wood on it.

Q. Yes. A little piece of stone through a wooden holder? A. Yes, sir.

Q. Just such as you could go into any stationery store and buy? A. Yes, sir.

Q. No particular brand of slate? A. No, sir.

Q. Now, what do you sit around when you are recording? A. We have a table a little larger than this table here.

Q. All sitting at that one table? A. Yes, sir, some sitting on this side and some on that side; it depends on how many men are working. We have an apparatus at the table, and there is possibly fifteen inches working room to write.

Q. Now, we will suppose that you have the apparatus on your head and it is running all right and you are going to get busy. Show us what you do. A. The first thing is to look at the clock and put the time down; the date we know. Then it just rings — buzz-z-z — just like that. That is an illustration. It is a ring from the outside. If you lift the receiver from the hook, it will just make a click. They will get central and they will say, "452 Plaza"—this is an illustration—and if they say, "Give me '452 Plaza,'" we know it is a call from the particular station we have under supervision.

Then we put down the number that we are supervising, say, "902 called 452 Plaza," whatever number they called. Then we put 452 there. Then 452 will say, "Who do you want?" "Who is this?" or any such question we would naturally ask on the wire. They say, "Give me Mr. Brown." If Mr. Brown

answers, he will say, "This is Mr. Brown," or they will say, "Hold the wire and we will get Mr. Brown." Mr. Brown says, "Hello, this is Mr. Brown," or Mr. Brown may say, "Who is this?" This will all be written down but not in full — just a couple of words, so that later on we can connect it to write it out later in longhand.

Mr. Moss.— Show us the size of that slate with your hands.

A. About five to six wide and about nine long.

Q. How many slates have you alongside of you? A. Each man has a slate there, and if it happens to be a long conversation, the man sitting next to him pushes his slate over, or if that man should be writing at the time, the man would have to finish up with his scratch paper. We did that before we had the slates. We found that sometimes the paper would stick and we would lose a little time, so we devised the slate, because the slate has a hard surface and there is no possibility of interruption like there is with a pencil. It would stick in the paper sometimes.

Q. You think that slate-pencil writing is just as legible as lead-pencil writing. A. For the time that we have it, yes, sir.

Q. It is more easily written? A. Quicker, yes, sir.

Q. Now, supposing your conversation goes right along for some time — two or three parties come in and you get a ten-minute conversation. What do you do? A. I don't believe we ever had a ten-minute conversation.

Q. Did you ever have a five-minute conversation? A. Irrelevant matter, we wouldn't pay any attention to it.

Q. How do you know it is irrelevant? A. Just appertaining to what we are listening to, we put that down, and if there should be something that should not be, we don't bother about it.

Q. You do this in shorthand? A. No, sir.

Q. Are you a shorthand writer? A. No, sir.

Q. Are any of your men shorthand writers? A. No, sir.

Q. Are you typewriters? A. All but one. There are not none of us expert typewriters.

Q. Do you take these conversations down, every word? A. No, sir. In slate pencil we just put down the body.

Q. That is what you were telling me when you said you didn't

put down what you think is irrelevant? A. Well, here is an instance. We get a message: "I am going to meet you to-night at One Hundred and Twenty-third street and Third avenue at 8.30. Be sure and have the stuff." All we put down is, "One Hundred and Twenty-third street — Third avenue — 8.30 — stuff." Later on, when you start to write that in longhand, the rest will come to you and you will fill in the rest.

Q. Oh, I see. A. What's the matter? It's a fact.

Q. Now, if you just stick to facts, you needn't worry about that. All we want is the facts, and Mr. Yunge, whatever you are doing, you are doing it in a system that has been devised by your superiors, and they are responsible for it. A. They are responsible for it.

Q. And if it is wrong, they never come to see it. A. We give them copies.

Q. But you give them the filled out copies? A. Yes, sir.

Q. And they don't know whether you are using a silicate slate or a school slate or what kind of pencils. A. Only from results.

Q. And when you give them the results, they are satisfied, so far as you know. A. As much as I know, yes, sir.

Q. Now, do the superiors know that in taking down these conversations, you skeletonize? A. I don't know whether they do or not.

Q. Did they ever ask you? A. Only here lately we were asked.

Q. Have you changed your method? A. No, sir.

Q. Still skeletonizing? A. Yes, sir.

Q. Now, Mr. Yunge, you are an honest, straightforward witness, I believe — I will give you my opinion on it. Now, it isn't physically possible for you gentlemen, any of you, with longhand, taking down a conversation between two people, to write every word on the slate, is it? A. No, sir.

Q. You couldn't do it? A. No, sir.

Q. There is no man that could do it? A. I don't know, but I know we couldn't.

Q. When men do dictagraph work, they have to be particularly trained and expert and shorthand reporters, don't they? A. Yes, sir.

Q. Have you seen accomplished shorthand reporters fall down on a dictagraph business? A. No, sir.

Q. Do you know that they do? A. They might, but I don't know.

Q. I had an experience with the Supreme Court shorthand reporters, that couldn't take a dictagraph. A. I have had an experience where they did it and made good.

Q. Oh, they have or it wouldn't be done, but I am talking about the difficulty of the art. It has been a man trained to do it, and unless a man can write shorthand and write it pretty good, he couldn't take down every word? A. No, he couldn't do it.

Q. You have done the slate work yourself? A. Yes, sir.

Q. You have done the scratch work yourself? A. Yes, sir.

Q. Well, did you ever, in taking down a conversation, jam your pencil? A. With scratch paper, yes, sir, and that is what made us change to the slate.

Q. You have, we will say, filled up a slate and gone over on a scratch paper with your notes, and then just as quick as you have got that done, there is another call for you. What do you do then? A. Well, we are not all busy at once. Another man mightn't be doing anything and he might say, "Take this."

Q. Suppose you should all be busy? A. I don't believe that has ever happened.

Q. Well now, how soon do you get up and copy this off the slate? A. Almost immediately. We sit right where we are and immediately copy the scratch.

Q. Now then, when you have copied that off your slate, what do you do with your slates? A. Wipe it off.

Q. Clean it at once to get ready for the next message? A. Yes, sir.

Q. And this that has just been copied, do you do the filling-out on the scratch paper — fill out the gaps? What I want to get at is, are the words that you didn't get filled in on the scratch paper? A. Right on the scratch paper.

Q. Now, you have got the scratch paper fixed up. When is it typed? A. Sometimes immediately, sometimes it is done later.

Q. There is no fixed time for it? A. No, there is no fixed rule on that.



Q. It might happen to be the next day? A. No, sir, the same day.

Q. Does the man who wrote down on the scratch paper do the writing on the typewriter? A. Sometimes, and sometimes not.

Q. Not always. Well, doesn't it sometimes happen that when you come to transcribe from the scratch paper to the typewriter, you have to fill in some words? A. No, sir.

Q. Doesn't that ever happen? A. No, sir.

Q. When you have put it on the typewriting paper, what do you do with the scratch paper? A. It is compared with the typewriter paper, and if it is correct, then the scratch paper is torn up.

Q. Who tears it up? A. As a rule, the man that did the typewriting, and the man that originally did the writing, he compares it.

Q. Now, you don't take this scratch paper out and show the commissioner? A. No, sir. Well, it might be something that was wanted quick, and not being expert typewriters, we wouldn't bother to typewrite that. I might take that up immediately.

Q. If it was something wanted at once, you might take it up? A. Yes, sir.

Q. Did you do that in any one of these Farrell cases? A. Just once.

Q. Who did you give it to? A. Mr. Scully.

Q. Do you remember what date that was? A. No, sir.

Q. It will often happen that the typewriting is done by a man other than the fellow that took it down? A. It has happened.

Q. And it will constantly happen? A. No, sir, it only happens with one man I have. He can't handle a typewriter very well.

Q. Which man of you don't do that? A. Hennal doesn't make a very good copy and either I or Slevin or somebody else will make his copy for him.

Q. Well, it may happen with any of your men? A. No, sir, we are generally a little jealous on that, and each man makes his own copy of it, so as to be sure to have it correct.

Q. Have you ever, for quickness, telephoned the messages? A. I have.

Q. Who to? A. Well, to the deputy commissioner or to the inspector, for quick action, or to an acting captain when something occurred that needed quick action, we telephoned direct when time counted.

Q. Now, we have destroyed the slate record; we have destroyed the scratch paper record — now we come to the typewritten record. Are all of the typewritten records preserved? A. Well, I made out two in this particular case.

Q. Who told you to do that? A. Well, as a rule — in fact, it is an order from the commissioner — he gets a copy of every conversation over any and every wire; and then the party that orders on a wire, I make a copy for that party. Now, if it is a deputy commissioner, I make a copy for the deputy commissioner. If it is for an inspector or somebody else, I make a copy for him.

Q. Now, the two copies that you made of these phonograms in the Potter matter — who did you give them to? A. One to Fifth Deputy Scully and one copy to the police commissioner. I may add that at first, at the beginning the fifth deputy did not get any copy. It was only later that the fifth deputy got a copy. That was when the Father Farrell wire was ordered on; from then on the fifth deputy also got a copy.

Q. Who told you to listen-in on this Potter matter? A. My first orders were from the commissioner.

Q. Now, let's understand this. Mr. Woods told you to listen-in on Dean Potter? A. No, sir — D. C. Potter.

Q. Doctor Potter. Well, subsequently, you listened-in on another wire? A. I did.

Q. Who told you that? A. Well, I will refer to a paper here. Then we listened-in on Dean Potter.

Q. That was the next one. Give me the date of the first one? A. The first one was ordered on March 17, 1916, but didn't go into effect until March 18, because it took that time to build the wire.

Q. To build the wire? A. For the telephone company to bridge the wire.

Q. What did the commissioner tell you about the Potter wire? A. He wanted information on the Charities Investigation.

Q. Is that all he said? A. All that I remember.

Q. I want you to be careful about that. Where were you when the commissioner gave you the directions? A. In the police commissioner's office.

Q. He sent for you? A. Yes, sir.

Q. Now, as nearly as you can, give the commissioner's language to you? A. He said, "Here is a number. Put it on." I looked at it and I didn't recognize the number, 948 Flatbush — I didn't recognize the number or the name, and just as I was leaving, he said, "That is in the Charities Investigation. I want all the information on that." That is as near as I can remember the actual conversation.

Q. Then on the second day, at least when the telephone company got it right, you began to listen-in on the Potter wire? A. On March 18 we started to work.

Q. Now comes the next one; when was that begun? A. March 24.

Q. What was the number of the wire? A. Flatbush 9277-J.

Q. Whose wire? A. Dean Potter's.

Q. And that is a party wire? A. Yes, sir.

Q. You got the messages of the other people? A. I wasn't listening. The men can tell you.

Q. I know, but they must necessarily have gotten all the messages. A. If the wire was used.

Q. Well, you were told to listen to that party wire? A. Yes, sir.

Q. And every party that was on that wire had his messages listened to? A. I suppose so.

Q. Surely. Well, all right. Who gave you that order? A. The fifth deputy commissioner.

Q. That is Mr. Scully? A. Yes, sir.

Q. What did he say to you? A. "Cover that wire."

Q. Well, did he say what information he wanted? A. He didn't have to tell me then.

Q. Why didn't he have to tell you? A. Because I knew.

Q. Now, you got nothing in writing, did you? A. No, sir.

Q. And you have given us all the orders you received? A. Yes, sir.

Q. And it was left to your intelligence to work it out? A. It was left to my intelligence from the experience I have had at this kind of work and the men working with me, to know what was wanted.

Q. Well, that was a pretty broad statement — “the Charities Investigation.” Did you know at that time who was conducting the Charities Investigation? A. Yes, sir, the papers were full of it.

Q. You had to rely upon the newspapers, then? A. Yes, sir.

Q. Did you know that Dr. Farrell was interested in it? A. From the newspapers.

Q. Didn't the commissioner tell you that you were to look out for Father Farrell's messages? A. No, sir, he did not.

Q. Well, supposing a message had come in from a man named Hebberd, would you have taken that? A. The Hebberd name was mentioned in the papers.

Q. You took it because it was mentioned in the papers? A. Yes, sir. It is up to us as detectives to know what is going on, and when we get a wire, we know pretty nearly what is doing.

Q. Well, are you policemen allowed by your superiors to get your information in these important matters by reading the newspapers as you can in the intervals between your busy occupations? A. As policemen, we get information in every way we can.

Q. I know, but the only way you can get this information is by reading newspapers. A. We have to go home and ride in the cars.

Q. And you hear the people talking about it? A. Or read the papers.

Q. And can you trust them for exact accuracy? A. The main facts are what we want on any subject.

Q. Well, you were prepared then to take any message coming in the name of Hebberd, because you knew about Hebberd? A. Yes, sir.

Q. And you say that nobody gave you any instructions? A. Not until March 25th, when we covered Father Farrell's wire. Then we got orders to go in on Father Farrell's wire.

Q. Who told you that? A. The fifth deputy commissioner.

Q. What did he say? A. “Cover Father Farrell's wire.”

Q. What for? A. That is all he said.

Q. Were you expected to give them every message that came in or only those that were pertinent? A. Only those that related to the subject at hand.

Q. And it is not possible, Mr. Yunge, that you have forgotten what somebody may have given you in the way of instructions? A. I don't think so, because the fifth deputy is always very brief in everything. He relies a whole lot on the detective to know what he is talking about.

Q. Now, who did you think wanted that information? A. I didn't think. My commissioner gave me the order.

Q. But he is relying on your intelligence. Who did you think needed the information? A. He needed it himself, and I gave it to him.

Q. Did you think it was for him? A. I gave it to the police commissioner.

Q. Did you think it was to uncover a crime—you were expected to use your intelligence—did you think it was to uncover a crime? A. I always do when I cover any wire.

Q. Did you think a crime had been committed? A. I did.

Q. Did you think a crime was going to be committed? A. Either going to be or had been.

Q. Which? A. I wasn't sure which.

Q. Why didn't you ask? A. I really always believe that my commissioner wouldn't tell me unless there was something there.

Q. But did he tell you, "These men are about to commit a crime and I want you to look for evidence of a crime that has been committed,"—not in those words, necessarily? A. No, sir.

Q. Did he tell you that a crime had been committed? A. No, sir, he did not.

Q. Did he tell you what crime had been committed? A. He did not.

Q. Did he tell you the crime of perjury had been committed? A. He did not.

Q. Did he tell you the crime of conspiracy had been committed? A. No, sir, he did not.

Q. Did he tell you to look for evidence of conspiracy? A. No, sir.

Q. Did he tell you to find out who was the author of any pamphlets? A. No, sir.

Q. Now, in your skeleton you might have left out some very important words. A. Well, that is one way the commissioner has for checking us up, for getting truthful reports.

Q. How can he tell what is truthful? A. No, sir, but he just merely gives us an outline of what he wants and it is up to us to get it.

Q. Did you think he was listening on the wire from some other point? A. No, sir.

Q. Well now, that is the third one that comes in; was there another? A. There was.

Q. In this case? A. There was in this case.

Q. What was it? A. The Hotel Irving.

Mr. Lamar Hardy.—Mr. Chairman, in regard to the Hotel Irving, I have submitted to you a letter from the mayor, which he would have you read into the record.

Mr. Moss.—This is a good time. I will read it. What number did you have for Father Farrell?

Mr. Yunge.—March 25th, "Greenpoint 1457, Father Farrell, 71 South Third street."

Mr. Moss.—Now, this letter:

Sir:

It has been drawn to my attention since I testified before your Committee that an attempt was made to supervise the wire which ran into the apartments of Mr. Hebberd at the Hotel Irving, in addition to the wires of the two parties and of Father Farrell. This was done after it had been ascertained that Hebberd was in constant communication with Potter, and the attempt lasted for but three days. I did not testify as to this, because it was not drawn to my attention until last evening, and while I am informed that there was no result from such supervision and no conversation over this wire was taken, at the same time I felt it better to state this to you lest a wrong inference be drawn. Will you kindly insert this in your record as supplemental to my testimony?

The letter is from Mayor Mitchel and dated May 26, 1916.

Were there not some conversations given which originated from Hebbard? Did you take some conversations from Hebbard?

Mr. Yunge.—I believe the men had some conversations.

Q. Then this letter of the mayor is mistaken.

Lamar Hardy.—They were on the Potter wire.

Q. You took some conversations from Hebbard?

Mr. Yungs.—No sir, I didn't take any conversations from Hebbard.

Q. In what way were they taken? A. I don't remember taking conversations myself.

Q. I have here minutes of the Strong Investigation. I refer to page 8650, where Mr. Hotchkiss speaks, addressing the commissioner: "One of the wires listened on was that of Dr. D. C. Potter of Brooklyn, beginning late on March 28, 1916. Strenuous efforts had been made to serve Dr. Potter and make him a witness in this proceeding. These failed, and it appearing from the conversations on the wire that he was about to leave the State and that, therefore, the commission of the proof as to the offenses testified to might be jeopardized, the police officers also, beginning on March 25, 1916, listened on two wires which they had reason to believe would be used in the same way that Dr. Potter's had been used. These were the wires of Dean Potter and of Father Farrell. Such wires were listened on for a few days only. These were the only wires, as I am informed, which were in any way interfered with by the police officers."

That is the statement of Mr. Hotchkiss, addressing the commissioner, and I have a distinct recollection of going over this matter and of making the memorandum myself upon this tap of the Irving Hotel. The explanation given for it was "a little perjury case," and I let it go. It meant nothing to me then, until I realized that Mr. Hebbard was living at the Hotel Irving, and so I investigated that little explanation of "a little perjury case," and I found it was Mr. Hebbard's wire, and this little investigation has been going on for a couple of days.

Now, Mr. Yunge, when did you begin to listen-in on the Hotel Irving? A. March 22d.

Q. What is the number of that? A. 6264 Gramercy. It is what is called a "PBX," the branch exchange.

Q. Now, what is the Hotel Irving? A. It is 26 Gramercy park.

Q. It is a hotel? A. Yes, sir.

Q. A respectable hotel? A. As far as I know.

Q. It wouldn't be permitted by the police if it wasn't? A. That is right.

Q. How many trunk lines run from the hotel? A. Two.

Q. How long were you listening-in? A. The twenty-seventh it went on and on the thirtieth it was taken off.

Q. How many guests are in that hotel? A. I don't know.

Q. How many guests did you listen to? A. I didn't hear any.

Q. How many did your men listen to? A. I don't know.

Q. You got nothing from Hebbard? A. I don't know. The men could tell you.

Q. You didn't get anything from Hebbard? A. As much as I can remember, we didn't.

Q. But you did hear a multitude of conversations? A. I didn't hear any.

Q. But they were heard, if your men were doing their duty and anybody was living there, you must have heard them; all those people weren't criminals, were they? A. Not that I know of.

Q. And they hadn't any suspicion that they were being listened to? A. Not that I know of.

Senator Thompson.—Do you mean to say the wire they tapped was the trunk line going into the hotel, so that in your place all the conversations of all the guests of the hotel came through the tapping place?

A. I do.

Q. And you listened to all the conversations from guests in the hotel for those three or four days? A. I don't know what the men listened to or heard.

Q. But all the conversations came through—what do you call that? A. The supervising board.

Q. They all came through that? A. Yes.



Q. That isn't the only hotel you have listened to in that way, is it? A. No, sir.

Q. You do that quite often, don't you? A. If we want to arrest somebody, yes.

Q. You listened-in on the Hotel Bristol, didn't you? A. Yes.

Q. For the purpose of finding out something about Seymours? A. Yes.

Q. Now, what other wire did you listen to in connection with the Farrell business? A. Those were the only four wires, the two Potter wires, Father Farrell's wire and the Hotel Irving's wire, and we didn't have any other wire on in what is called the Farrell case; those are the only wires. And those are the only wires that any conversations have been forwarded to the police commissioner or anybody else from my branch.

Q. Did you give any copy of any of these conversations to Commissioner Kingsbury? A. No, sir.

Q. Have you heard whether any copy of it reached him? A. I don't know.

Q. Have you heard? A. No, sir.

Q. Did you have any orders as to who should have copies? A. No, sir.

Q. The two copies that you have mentioned, were they the only copies that you know anything about? A. Yes.

Q. If it was recopied, you don't know anything about that? A. I don't know anything about that.

Q. You don't know how Mr. Hotchkiss may have had a copy of them? A. No.

Q. If Mr. Kingsbury had a copy of them, you don't know how he got them? A. No, sir.

Q. When you were listening to these conversations, did you know the persons you were listening to? A. Personally?

Q. Yes. A. I won't be qualified to answer that. The men would be. But in other cases I knew some of them, but not in this particular case.

Q. Did you know Dr. Potter? A. Not at that time.

Q. Had you ever consciously seen or heard him speak? A. No, sir.

Q. What about Dean Potter? A. One in the case that I knew personally.

Q. When you listen to conversations you are enabled to do that because the wires have been switched, as you said? A. Yes.

Q. Now, there are two ways of switching the wires, as I understand; one of them gives you a clearer hearing of voice than the other. A. Well, there are two ways, but the general way, the way we are doing it, is the best way.

Q. Well, there are two ways in one if they use one wire, and in the other way you use two wires? A. Yes.

Q. When you use two wires to bridge, you get what is called a metallic circuit and that is better. A. Yes.

Q. And when you use only one wire it has to be completed through the ground? A. That is out of date, it is entirely out of date now.

Q. Do you say you listened in this case on the metallic circuit entirely? A. Yes, sir.

Q. Did you ever use the ground circuit in your work? A. Not while I have been a policeman.

Q. What was your business before you were a policeman? A. Telegraph man and operating testing sheets for the Western Union.

Q. You have had quite an experience as a telegrapher? A. Yes, sir.

Q. Were you a telegrapher or a lineman? A. I was a telegraph operator and a lineman and when I quit the Western Union, I had charge of the whole Wall street district and all their wires below Wall street.

Q. Were you put on the supervising board as a policeman doing police duty? A. No, sir, I didn't like that work, I preferred staying outside and doing outside work. You mean up in the telegraph bureau of the police department?

Q. Yes. A. No, I didn't like that work.

Q. Who is the fastest slate writer you have over there? A. Blaha, I guess, is about as fast as any.

Q. You went directly from employment by the Western Union Telegraph Company into the employment of the police department, and if I understood you correctly you went at once into the telegraph work or telephone work. A. No, sir, when I left the Western Union, I went into uniform on East Twenty-second street.

Q. How long? A. I was in uniform about two years and three months, something about that, and then I went in an inspection district about a year and something and then I went down in the detective bureau and have been there practically ever since with the exception of about five months.

Senator Thompson.—Have you ever been called upon to go to court in any of these conversations?

A. This is twice I have testified.

Q. The information generally that you are asked to get doesn't require taking the whole of the conversation, anyway, does it? A. No, sir.

Q. You have just got a specific thing to find; if a certain man talks, for instance, there may be somebody you have got a warrant for and you supervise the wire until he shows up and when he shows up you tell them and in that case you don't have to take the whole conversation? A. No, sir.

Q. And you don't try? A. No, sir.

Q. And it is only a percentage of these conversations where you try to get the whole conversation? A. We try to get the whole conversation so as to give the commissioner a connected idea of just what we did get.

Q. You fill in these blanks—of course, it is impossible to take down on a slate as fast as they talk on the wire. A. It is impossible to get it word for word, but we get the substance of the message.

Q. It is impossible to get half of it, anyway, and take it in the time they are talking, so you have to run it out and you run it out in your own language. A. Sometimes we do but we try to remember as near as possible the words used in the message, but the main thing is to get the body of the message.

Q. You might call that your own language. A. Yes, but we try to get the same words.

Q. Suppose a man says, "A package of cigarettes," and your phonogram comes out "package," you might miss the cigarettes. A. Anything is possible.

Q. Quite possible in the hurry and in the way some people have of dropping their voices, you might miss a word or two.

Senator Thompson.—I listened-in on one of them myself and I found that there was a lot of conversation you don't get. Do you know, I find that true and it gets low at the time so that you can't distinguish it.

A. It depends upon the wires running a long distance or in a certain neighborhood where there is a heavy over-hung line, a trolley, where you get a lot of induction which will interfere with the hearing, but we don't have much interference in New York City because about everything is under ground if you take Queens, Jamaica or a wire that is outside of the electric-light or trolley wire.

Q. What about Flatbush? A. I don't know. That section out there is fair.

Q. Fair, but still there is some little difficulty.

Senator Thompson.—I noticed one call from Brooklyn to New York and in that way I found difficulty in hearing the words of conversation. Do you find that?

A. It depends upon Brooklyn. If you go to Brooklyn underground, in the cable, you will get a conversation all right, but if this cable should go over a bridge, you would get that from the heavy feed under the trolleys and that would interfere. It all depends upon the routing of the wire.

Q. But there is some interference in your ability to hear the whole thing? A. Yes.

Q. Now, another thing. Senator Towner is a little bit modest. Now, do you make a practice, after you take a conversation, to hunt up the man to talk with him to see whether you can distinguish his voice? A. Only in this instance.

Q. Who told you to do that? A. The second deputy commissioner.

Q. What is his name? A. Lord.

Q. When did Mr. Lord tell you to seek out these gentlemen and listen to them? A. I think last week some day, I don't know the exact day.

Q. Before you went to the grand jury? A. No, after going.

Q. When we took it up? A. I don't know who had it in charge then, but it was some day last week.

Q. There were a couple of days, Mr. Yunge, when I was trying to get you policemen down here, when was it? A. I was here the first day. Your subpoena server gave me a subpoena one afternoon about 12 o'clock and said, "Come down on the 23rd," and I opened it up and saw the subpoena read for the 22nd at 2.30.

Q. Was it after that? A. I am not positive, but I think it was after that that we started to get conversation with the different people.

Q. That was after I had subpoenaed or caused you to be subpoenaed? A. I am not positive of that.

Q. Well now, you know that a voice sounds differently on the telephone wire from what it does in the open, don't you? A. When you know a man and have heard him talk, you recognize his voice over a wire just as we are talking now.

Q. But it sounds different, doesn't it? A. I haven't found it so. I recognize people over the wire after I have heard them talk.

Q. When you have heard him on the telephone, could you recognize the voice on the street? A. I could.

Q. Now, have you tried that to make sure? A. I have, yes.

Q. Now, you know Mr. Yunge, that it is a matter of common knowledge almost all folks have had some experience on, what they say is the difference in the tone of a voice this is being heard on the telephone from the same voice being heard on the street. Isn't there a difference? A. I haven't noticed because I have made a practice of it, made a study of it.

Q. Have you made a study of listening to voices on the telephone and then going out and talking to them? A. I have made a study this way — if I have heard certain people talk and one of the men knew that party, say, Brown is talking, as I went around in my travels and looking for information, I would meet that party and I would recognize that party as the party I heard talking over the wire.

Q. But you have never had to go to court before? A. No, sir.

Q. That is by a purpose to keep your men out of observation?  
A. Yes, sir.

Q. So you haven't had any particular experience in trying to

distinguish in the open, voices that you had heard on the telephone? A. Well, we pride ourselves when we are taking conversation to recognize voices.

Q. Why, when you didn't have to go to court? A. It is this way, if we are getting some information on any particular party and the name isn't mentioned, that we can tell who was talking, who the party is, and sometimes we know these people also by sight and have spoken to them.

Q. Where did Mr. Lord tell you this? A. I believe — what do you mean?

Q. What you were to do. A. I believe when we were in the second deputy's office. I think that was the place.

Q. At night or in the daylight? A. I think it was in the morning.

Q. Now, I want you to tell us exactly what Mr. Lord said to you. A. The first time we were to go over there and try to get acquainted or get close to Mr. Farrell, Mr. D. C. Potter and Heberd and to hear them talk and to get their voices.

Q. What else did he say? A. To be sure and get their voices.

Q. Did he say it was for the purpose if you were asked about their voices, you would be able to say you had spoken to them and heard them talking in the open? A. That come later.

Q. What did he say about that? A. He said, "You want to be sure that you have their voices and can conscientiously state they are the same men you heard talking on the telephone."

Q. That is two months after you heard the conversations? A. Those conversations were heard between March 18 and March 30.

Q. And now you state conscientiously — A. I haven't stated anything yet.

Q. Do you? A. I am not in a position to state anything like that because I did not get any of the conversation.

Q. Didn't you hear a single message from these men? A. Not one.

Q. Have any of your policemen told you that they can now conscientiously identify the voices? A. They have.

Q. Every one of them? A. They have.

Q. And where were these voices heard? A. Father Farrell was heard just as he was coming down from the grand jury

in the court room. I was present and spoke to Father Farrell myself as he stated this morning in almost about the language Father Farrell used. It was a little bit longer conversation and the other men can tell you what their conversations were with D. C. Potter and Mr. Hebberd. So I am not in a position to tell what conversation took place.

Q. Why were you to hear Mr. Farrell if you didn't hear any of the conversation? A. I was to start the conversation.

Q. You were to take charge of the squad? A. It was a squad operation.

Q. You were expected to see them through it? A. I was expected to start the conversation.

Q. To see them through it? A. To be present to see that they did really talk.

Q. Who were the men that you were to listen to? A. Father Farrell, Blaha, Watson, Kennell, Slevin.

Q. You heard Mr. Farrell's statement this morning? A. I did, yes.

Q. Now, there were present at the hearing before Commissioner Strong, present as witnesses and testified, Sergeant Yunge, Officer Watkins, Officer Watson, Officer Kennell, Officer Slevin and Sergeant Blaha. Were they all members of your squad? A. Yes, sir.

Q. Well, Father Farrell was a witness over there. A. We weren't there when he was there.

Q. But he was there. A. Not to my knowledge.

Q. Didn't anybody tell you to go over and see Mr. Farrell? A. No, sir.

Q. Dr. Potter was a witness. Did anybody tell you to listen to him? A. No, sir.

Q. They had a reason. A. I don't know.

Q. Now, you are required, Mr. Yunge, to use your own initiative, your own judgment, why didn't you go over there then and listen? A. I wasn't ordered to go over.

Q. But there are lots of things you are not ordered to do that as a detective you are supposed to do. You have said so. We want what is correct with the Charities Investigation. Why didn't you go over and see these men that were testifying in the

Strong Investigation that your men had been listening to on the wires? A. I would have to abandon my boards and have the men do that.

Q. You can do that, can't you? A. If I was ordered to do it, yes.

Q. But couldn't you with your initiative, couldn't you go and say to your superior officers, "Won't it be a good idea for us to go over and see these men?" And be able to tell you whether or not they are the voices we heard on the phone? A. No, sir.

Q. And it wouldn't have occurred to you now, if Mr. Lord hadn't put it up to you? A. I am obeying orders, that is all.

Mr. Moss.—I think that is all.

Mr. Lamar Hardy.—Mr. Yunge, you don't make the connection with the wire to be supervised, do you?

A. No, sir.

Q. That is, the police department doesn't? A. No, sir.

Q. Who makes the actual connection of the telephone so that the police department can listen-in. A. Some telephone employee.

Q. It is done by the telephone company? A. Yes, sir.

Q. And the only wires you supervise or listen-in on in this room that you have described to Mr. Moss, are the ones that have been arranged so that you can listen in by the telephone company? A. Yes, sir.

Senator Thompson.—That is, they do the mechanical work.

A. Yes, sir.

Q. At whose request? A. At the police commissioner's request or an order from him that we have been using for two and one-half years.

Mr. J. Frank Smith.—You are limiting your statement now to the room you operate, the supervising board, when you say that the telephone company makes the only connection?

A. Yes, I am limiting all operations with any wire-tapping, nearly four years, to this room.

Q. But that is limited only to this board room. You don't pretend to make any statement of operations outside of that room? A. No, sir.



Mr. Lamar Hardy.— You don't supervise any wires outside of that room?

A. No, sir.

Q. Now, Mr. Moss asked you why you didn't go to this Charities Investigation. You didn't know about that, did you? A. No, sir.

Q. You have testified that you take these notes down on a slate and then transcribe them, the man who takes the conversation typing it out on the typewriter. A. Yes, sir.

Q. You get the substance of the conversation, don't you? A. Yes, sir.

Q. Now, these conversations you had before you, which are now in the possession of Kings county, could you swear they were true? A. The men who took them could, and if I saw them, I could swear they were the same ones, because I have a mark on the majority of them.

Q. Now, Mr. Moss put a hypothetical question to you about cigarettes, now if you were listening-in on a wire and you hear a man whose wire you were supervising, offer to pay a certain amount of money for a man to get out of town, you wouldn't forget that, would you? A. No, sir.

Q. And would you put that down? A. Yes, sir.

Mr. Lamar Hardy.— That is all.

Mr. Moss.— In regard to that very matter, didn't any of your superior officers tell you that they suspected that one of these men would leave town?

A. No, sir.

Q. Did anyone tell you to be looking out for information as to whether some man would be leaving town? A. No, sir.

Q. At no time? A. No, sir.

Q. Well, what made you think it was necessary to report conversations which indicated that Mr. Potter was likely to leave town? A. It showed a bearing on the charities investigation and that was what I was looking for.

Q. What made you think that bore on the charities investigation? A. I think the men who took that conversation would be more competent to answer that question.

Q. But you were the boss. Now, Mr. Potter wasn't connected with the charities department, was he? A. Not that I know of, but his name was mentioned.

Q. Was he accused of anything? A. I don't know.

Q. Was any subpoena out for him? A. At the time I don't know, unless we saw by his conversation he was apparently evading subpoena service and the men took it.

Q. Well, your men say that there were two such messages overheard. A. On what?

Q. About leaving town and money. Now, when you reported the first one, with the offer of fifty dollars, didn't the person to whom you report, give you any instructions or any information or say anything about it? A. No. When I have any messages that I take up to the commissioner, I have one bundle for the commissioner and I hand him the different information. I have one bundle for this, and on the outside would be marked what it is. I say, "This has all been acted upon." I salute and go out and, when I went up to see the fifth deputy commissioner, I just said, "This is Charities and has been taken care of." The reason I say, "Charities," is because he would know there wasn't any action taken on this information, but on the other cases there will be.

Q. But with all that occurred in that charities investigation and with all the reason for listening on wires and giving more inquiries and more wires to listen on, you have told us every bit of instruction that was given you and every bit of information that was given you? A. That is all I can remember that was given me and I don't think there was anything else, in fact I am pretty positive there wasn't anything else, because Commissioner Scull is very short in his talk and Commissioner Woods is also very short.

Q. Commissioner Lord, too, is short? A. He is short.

Q. They are very brief? A. They are very brief.

Q. And now that you have thought this thing over, we have been talking a little while, can you remember a single call in your room of any superior officer to find out what you are doing, how you do it, to advise you, to give you any directions for doing better or worse or anything at all? A. I am supposed to know my business.

Q. But answer the question. A. Not that I remember.

Q. You are simply supposed to know your business, and when you deliver the results, that is all that is asked? A. Yes, sir.

Q. And you have been kept there these years because you did know your business and gave the results that were wanted? A. Yes, sir.

Mr. J. Frank Smith.—You answered Mr. Hardy that the reason that you didn't go over to the charities investigation and listen to these voices was that you didn't know anything about this in substance.

A. No, my answer was ——

Q. He suggested the statement and you said yes, that you didn't know anything about that. A. I don't remember my answer to that particularly.

Q. Now, why did you not go over sometime during your relief and listen to these voices? A. Because I wasn't ordered.

Q. And you didn't care anything. A. Well, if I am not ordered to do a specified thing of that sort, I don't do it.

Mr. Lamar Hardy.—You are under orders from your superior officers, aren't you?

A. I am.

Q. And you do what they tell you to? A. Yes, sir.

Mr. J. Frank Smith.—What orders do they give you?

A. In relation to what?

Q. In relation to what orders you get. A. On wire work, you mean, or what? It is a big question.

Q. I am not going to particularize. He asked you and you told him very readily what orders. A. To cover those wires and to give a copy of everything to the police commissioner or to anybody else in the police department that was directly interested in one of those wires.

Q. And get as much information about those wires as you can?

A. On the particular wires we had on.

Q. That would include a recognition of the voices if necessary?

A. If we were ordered to do so.

Q. And in particular cases where you felt that it might be

necessary? A. In some particular cases where I went out and looked up people, I went in these places and I knew them and then we recognized their voices that way.

Q. And you do that on your own initiative? A. In those cases, yes.

Q. And you won't require a superior officer? A. Not in that case, no, sir.

Q. Didn't you think as a detective of some years standing that it might be desirable to recognize these voices? A. In this particular case, no, sir.

Q. Didn't you know that it was used within a comparatively short time after you took it? A. I did not. I haven't any idea.

Q. And didn't you know that the information that you furnished was to be the subject of inquiry in the charities investigation? A. Afterwards I found it was.

Q. How long afterwards? A. I don't know.

Q. Were you not a witness before the charities investigation? A. I was there on April 19th; that was the date I was there.

Q. On some of this particular matter? A. We were, yes.

Q. Then you knew it was being used? A. That was the first time I had an idea it was being used.

Q. What is the first time? A. April 19th, I believe it was closed at that time. We were the last witnesses. Up to that time I didn't know it was to be used.

Q. You weren't asked to recognize voices in that inquiry? A. No, not on April 19th.

Mr. Moss.—Did you ever cut in on the wire 801 Madison Square?

A. No, sir.

Q. That is Father Dineen's wire. A. No, sir.

Q. Did you ever cut in on 6606 Plaza or 8818 Plaza, Monsignor Dunn's wire? A. No, sir.

Q. Did you ever cut in on a lawyer's wire for the purpose of learning when his clients called on him? A. No, sir, excepting a client might be wanted for a crime.

Q. Now, we will suppose a client is wanted for a crime and you think naturally that he will go to consult with his lawyer, have you ever put his lawyer's office under the listening power and taken

all the things that came in over his wire in order to discover when his client visited him? A. No, sir. Not for that purpose.

Q. Well, for what purpose? A. After a man was wanted and we thought he would try and call in, we would try and locate him that way.

Q. By tapping his lawyer's wire? A. Yes, sir.

Q. You didn't tell his lawyer anything about it, did you? A. No, sir.

Q. Did you find a man named Sipe by getting in on the wire of a lawyer named Newell? A. I don't remember that. Is it some-time ago?

Q. Well, I won't mention any names to you, because there is no use of dragging in any more names than necessary, but when you are listening to the wire of a lawyer for a man whom you want, while you have that wire covered you hear everything that transpires on that wire. A. Anything foreign we would hear would go in one ear and out the other.

Q. Well, supposing that client, not knowing that his lawyer's wire was covered, should call up his lawyer and say to his lawyer that he had committed the crime? A. We wouldn't take any action on that.

Q. Why not? A. Because we have never had an opportunity like that.

Q. Why wouldn't you? A. I don't think we would.

Q. Why don't you think you would? A. We wouldn't have that lawyer's wire, in the first place, unless the man had committed a crime.

Q. But you hadn't tried and convicted him. A. Only for locating him.

Q. But supposing you are after the man you haven't arrested yet. Nobody knows you have a warrant, but you know, and you want to get him and you know who his lawyer is; now, a jury may say he is innocent or guilty, but if you want to put him to trial you put his lawyer's wire on tap. Now, supposing the case goes so that you hear this fellow call up his lawyer and he tells his lawyer. "Well, I did that thing, but I am relying upon you to get me off"? A. We won't take any action.

Q. Wouldn't you report it to your superiors? A. No, sir.

Q. Why not? A. Because it is regarded as confidential information.

Q. You regarded it as confidential? A. Yes.

Q. Why should you take the responsibility of that? A. As I understood the question it would come under this — that it was a confidential communication from a lawyer to a client and I won't take any action on it.

Q. Well, isn't it a fact that a man's calls on his lawyer are just as confidential as what he says to him? A. Well, he is wanted.

Q. When you want him to convict him? A. Yes, sir.

Q. Now, without calling many names, but just simply to point your mind to a specific case, didn't you put a tap on the wires of a lawyer down on lower Broadway, nobody whose name has been mentioned in public at all, for the purpose of hearing any conversations that might occur between him and his client, who was a man that you wanted?

A. (Mr. Lamar Hardy).— Now, Mr. Moss, I don't think that is quite fair. We have agreed to give you all the information about these three hundred and fifty wires which have been supervised by these men in executive session and we have an agreement that nothing would be made public and I am perfectly willing —

Mr. Moss.— I am not making a single case public, I am not calling a single name. I am referring to a custom and a practice and in order to illustrate the custom and the practice, I am pointing his recollection to something that he may remember without mentioning a single name.

A. I don't remember the case at present.

Q. You don't? A. No, sir.

Q. Now, that is merely to refresh your recollection, you can put it in your pocket afterwards. A. Yes, I remember that case.

Q. Now, weren't you listening-in on the wire of a lawyer for the purpose of locating the clients of that lawyer whom you wanted to arrest? A. Just to locate the client. The answer is that I was listening to recollect the man whom there was a warrant for.

Q. And you were listening on that wire because you knew the man was his lawyer and he would likely confer with his lawyer

and you were taking chances that the man might make a confidential statement to his lawyer and you would never even tell your superiors about it. A. No, sir, that thing never happened yet. I have never had the occasion.

Q. I know, but that is the way you regarded that particular case? A. In this particular case, the occasion never arose.

Q. But you heard everything that came in on that lawyer's wire while you were supervising it? A. I may have heard some messages and the men may have heard some.

Q. Well, anything that went over that wire, however confidential it might have been, the men might have been making confessions, giving directions as to their wills, there might have been family differences between husbands and wives, parents and children, and all those things went through your ears on the wire of an innocent lawyer, if there is such a thing, because you wanted to get his clients. A. If I had the wire on, I would have heard it.

Q. Who told you to do that? A. I would have to get my book out.

Q. All right, one of your superior officers? A. Yes.

#### ADOLPH BLAHA:

##### Examination by Mr. Moss:

Q. Now, Mr. Blaha, you heard the testimony of Sergeant Junge, didn't you? A. Yes, sir.

Q. And you heard him testify as to the methods of work in your bureau, now, if he made any mistakes in anything, if there is anything that you would like to correct in his statements of facts, please do it. A. I, well, I would like to correct this part, where you refer to a lawyer whose wires was tapped. I would certainly take that message and give it to him.

Q. You would give it to the commissioner? A. To Sergeant Junge.

Q. But all the statements that Mr. Junge made about the way you operate are correct? A. Yes, sir.

Q. Well, then, I won't carry you over that. I would assume that you would say the same as Mr. Junge. A. All right.

Q. Were you ever directly asked by any superior officer to cut in on any wire? A. No, sir.

Q. Have all your operations been under the direction of Mr. Junge? A. Not all.

Q. Well, who else? A. Under the directions of Lieutenant Charles H. McKenna, Captain Tooney, Lieutenant Gilday.

Q. Are all of those detectives belonging to detective squads? A. They are lieutenants, one is a captain.

Q. Well, they are all in the detective service? A. Yes, sir, excepting McKenna. He was transferred out of the bureau about two years ago.

Q. But they don't belong to your squad, do they? A. No, sir.

Q. And not one of them is an inspector or commissioner? A. No, sir.

Q. What orders had you for to cut in on those wires? A. Do you mean physically?

Q. I mean to listen. A. The only thing I know I obeyed orders.

Q. But you took orders from these men, what right had you to obey their orders? A. I was directly under their supervision.

Q. Do they have supervision in your squad? A. At various times they have got three different men there.

Q. Now, Mr. Yunge didn't mention anything like that. Did they come into your room? A. But he did mention he was not in charge of the squad the entire four years.

Q. Have any of these men given you orders since Mr. Yunge was in charge? A. No, sir.

Q. Previous to — A. Yes, sir.

Q. But you never have come in contact with commissioner or inspectors with regard to the work? A. Only on one occasion. I telephoned to Commissioner Scull.

Q. Well, he is a commissioner? A. Yes.

Q. That is what I mean, Scull, the deputy police commissioner? A. Yes, sir.

Q. Now, referring to your work on the slate which you transferred as Mr. Yunge said to the scratch pad, didn't you sometimes have to fill in words which were left out on the typewriter? A. No, sir.



Q. Never? A. No, sir.

Q. Not a single word? A. No, sir.

Q. Well, supposing in a hurry, the man writing on the scratch pad left out a word, obviously? A. It never occurred to me.

Q. Don't you think that in as much as the first writing on the slate was just skeletonized that the conversation might freshen in your mind on the third writing, you might think of some word you had overlooked? A. No, sir. I won't stop until I had the entire conversation on the scratch paper.

Senator Lawson.—Do you want the Committee to understand that it is not physically possible after going over from the slate to the pad, that you could again refresh your memory on the third attempts?

A. It could happen, but never happened to me. I didn't stop on scratch paper until I was positive I had the entire conversation I heard on the paper.

Q. That is your experience? A. Yes, sir.

Q. (By Mr. Moss).—Now, Mr. Blaha, I handed your predecessor upon the stand the name of one lawyer and I asked him some questions about that one lawyer. You heard those questions and answers. I am going to hand you the names of three lawyers — rather law firms, different from what I handed him, and as you if you listened to conversations upon those wires for the purpose of locating their clients who were wanted.

(Witness examines paper.) A. Yes, sir.

Q. You did. Keep that, tear it up. Don't let anybody get it, that is all. I hand you the name of another lawyer, a Brooklyn lawyer, and ask you the same question in regard to him? A. Yes, sir.

Q. Now, that makes four, and one makes five. Then, it is not an uncommon practice? A. I don't know about the other.

Q. Well, those four, then it is not an uncommon practice to listen-in on the wires of lawyers in order to locate their clients? A. Well, we have reason to believe that a man or person, who is wanted for a crime, is about to use a certain wire, and we know it would be the means of apprehending him, we are requested to tap that wire.

Senator Towner.— The question is, is it usual or unusual?

A. Well, you can consider that yourself. If Mr. Moss hands me the names of four lawyers, and the names of eighteen —

Mr. Moss.— Yunge had one, don't be so sure. I am asking you, aren't there others?

A. I couldn't think offhand.

Q. Now, you had no complaint against either of those law firms? A. No, sir.

Q. They weren't being looked up because they had committed crimes or were suspected of committing crimes? A. No, sir.

Q. And you took the chances of listening to all of the secrets that clients might confide to their lawyers, believing that telephoned conversation was protected and inviolate, you took the chances of listening to all the conversation that might come in as long as you kept the tap on, just thinking that the fellow you wanted would be apt to call up his lawyer, just — A. Just as soon as I heard a conversation that did not refer to the person not wanted, I disregarded that, because I had other wires that were more important.

Q. But, supposing it was a conversation by the man you wanted which tended to show where he had been and what he had been doing, you would report where he had been and what he had been doing, and would send your detectives to the places where he had been and finding the place, the persons seen there? A. I would deliver that information.

Q. Well, your superiors know you are doing that, don't they? A. Yes, sir.

Q. Well now, while you are doing that, listening into the detailed business of a law office, did it ever occur to you that the law prohibits a lawyer from revealing the confidential communications that have been made to him by his client? A. I believe that the law does that.

Q. Yes, just the same as the law prohibits a minister from revealing the confidences? A. Yes, sir.

Q. And you know that the telephone is a confidential arrangement, don't you? A. I do not.

Q. You don't? A. No, sir. I believe the wires belong to the

New York Telephone Company, and they only rent them to the subscribers.

Q. Well, do you believe a man's house that the landlord rents to him is a confidential arrangement? A. The arrangement is confidential, yes, sir.

Senator Thompson.— Your idea is that the telephone company, when it rents the wire, only rents that part of it that can be used for conversation that you don't want to hear?

A. I didn't get that right.

Q. I say, that when the telephone company rents the wire, it reserves to the telephone company and does not rent to the client the right to put any conversation over it that you might want to hear? A. Well, the telephone company don't care what they use it for.

Q. Then they rent it for any kinds of conversation they want to use on it? A. Yes, sir.

Q. And you wouldn't hesitate to listen to the wire of the wife of the man that you wanted, would you? A. No, sir.

Q. And if you put your ear on the telephone of the wife of a man that you wanted and you didn't find him, but you hear the wife and her children, who might be living at some other place, expressing their anxiety and their sorrow and their fears and their feelings, would hear all that, wouldn't you? A. I wouldn't hear it all, if I wanted to hear it.

Q. You would listen, wouldn't you, because may be the wife or the child might drop a clue where the father was? A. If I thought that would be the case I would listen.

Q. And I could hand you names out of that list like that, couldn't I? A. I don't know whether you could.

Q. Aren't they there? A. I don't know.

Q. Such conversations are there in the departments? A. Not unless they are accompanied by conversations that are needed in the police business.

Q. There are several policemen, but it is all a repetition now.

Senator Thompson.— I want to end this wire tapping business to-night.

Mr. Moss.— Now, Mr. Chairman, I have not gone into the question of who took the particular conversations that have been referred to by the mayor because of the position taken by Mr. Hardy and your ruling upon the matter; I haven't gone into that at all.

Senator Thompson.— And you needn't to. I want to end this wire tapping business. I think we have covered it completely. It seems to me all the mayor wants is to be here again.

Mr. Hardy.— I don't know; if he does, he will say so.

Senator Thompson.— There are so many tribunals now looking into these affairs, we intend to adjourn until Wednesday morning. We adjourn and we have got a lot of work that the Committee has got to do besides wire tapping. We won't be able to go into this question again on Wednesday and we will have to take up the other matters that are crowding the Committee hard.

Mr. Moss.— We can't foreclose; something may turn up that we will need very much.

Senator Thompson.— At the same time we won't take up this subject again. Then, of course, Mr. Moss, you will arrange to proceed on the theory that we are working with our old friends.

Mr. Moss.— Yes, sir, our old friends.

Senator Thompson.— So that Wednesday morning we can go into that. Then we will regard this thing as done. I would like to see this board and these slates some day when I've got time — come down there and see you. Where are you?

Mr. Hardy.— I don't know whether I have power to give you that permission.

Mr. Moss.— They don't want to uncover their room.

Senator Thompson.— Oh, they don't want anybody to know where it is?

Mr. Moss.— And I agree with them, I am inclined to be conservative about such things, but, Mr. Chairman, I think that the commissioner of police owes it to you, I won't say anything about

myself, owes it to you to take you and let you see it and it might give him the opportunity of inspecting it himself; it ought to be a great sight to him.

Senator Thompson.— Well, it won't be next week anyway.

Mr. Hardy.— This office has been so effective because of its absolute secrecy.

Senator Thompson.— Well, of course, I assume everybody in the city of New York takes this sort of confidentially now.

Mr. Moss.— Mr. Schuster just suggested a question. Have you listened-in on doctors?

A. (By Witness).— That I couldn't tell you offhand.

Q. For the purpose of locating anybody? A. I couldn't tell you.

Q. This is pretty quick work, but I will just see if I can pick up something. I hand the name of four doctors and ask you, have doctor's office or houses ever been watched for purposes of locating criminals or purpose that you wanted? A. I don't recall either one of these.

Senator Thompson.— Now, what I said this morning before adjourning, I don't know might be misconstrued; I don't want it misconstrued. What I said about charities building is only on information, I am not making any positive statement about it, I don't charge them with anything; I simply say that they are in that matter which we have now heard and which I think has passed this Committee. I think we have heard everybody that we ought to, that there are two respectable sides to it, at least, and I simply suggest the real investigation of it should be one that gives the facts to the public in regard to both sides, because the interests of the public are very vital here; that is what I meant to say. This Committee can't do it; somebody, some official, somewhere, somehow ought to do it. That is what I want to say. We are not going to go away from here thinking that the city of New York is bad. We are not going away from here thinking that police department is not the greatest in the world; we think it is. We are not going away from it and think it is not a good one compared with others — it is. We think it is. But everybody

is human and they make mistakes, and they might want to have legislation and in the meantime, the world progresses, and I think that the telephone company itself would explain to the Chairman of this Committee that they think that telephone tapping has gone a little bit farther than it ought to have gone. I can't see — we have been through this thing — I can't see how we can criticise the telephone company at all. They have been ordered to do these things and the law was in a peculiar state. I don't believe the law justifies the tapping of telephones; I don't believe you can read section 552 to justify it, but at the same time, I think the telephone company can't be criticised for it. They have to supervise the work, they have to supervise it in order to get a service in their central office until they get some sort of an automatic control that never breaks down. They can't do it.

We have to have confidence in doctors and lawyers and priests, and the law recognizes that in the case of a public utility, you have to have confidence in the officers of the corporation that operates the utility. Something has to be done of that kind. With that sort of a charitable statement, we will close the charity part of our investigation and go ahead with other matters next week.

Adjourned until May 31st, at 11 A. M.

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**MAY 31, 1916.**

Hearing of Thompson Public Service Investigating Committee,  
May 31, 1916.

Meeting called to order by Senator Lawson at 12.45 P. M.

HENRY B. SEAMAN was called as a witness and, having been previously sworn, testified as follows:

Mr. Moss.—Mr. Seaman, you will remember, is the former chief engineer of the Public Service Commission and when he was on the stand before had me go over the figures of the Bradley contracts. You will recall there was one of the Bradley contracts was readvertised and let nearly a year later than the originals, and the claim of Mr. Seaman was made good upon the examination

of the two bids that showed that the city gained about fourteen per cent by readvertising that route, and if it had readvertised all of the Bradley contracts, as it probably would have done on the same proportion, there would have been a difference of over three million dollars.

Those circumstances are in the record and I shan't repeat them again. I have asked Mr. Craven to extend his examination for our benefit and to go still further into an examination of those Bradley contracts.

Senator Lwason.— You mean Mr. Seaman?

Mr. Moss.— Yes, Mr. Seaman. And you have made an examination of some figures?

Mr. Seaman.— I have.

Mr. Moss.— Now, I have before me a statement that you have given me, and I will follow it along with you. You say here that the fact that bids were asked on subway plans which had been condemned by the chief engineer who had signed them, made the whole bidding a farce and it was everywhere recognized that there would be no real competition and prices would be higher, and nine months later, after labor conditions and prices of materials had lowered construction costs, four sections totaling \$13,388,964 were let to one contractor, the Bradley Company, without readvertisement of further competition, on bids which exceeded the Commission's estimate by \$609,691 although there were bids on three other sections, seven, twelve and fifteen, which were lower than the estimates by \$1,710,298.

A. (By Witness).— You will find those in the last sheet tabulated.

Q. (By Mr. Moss).— Now, I wish, Mr. Seaman, without putting the facts into my questions, you would go forward and state the result of your examination.

A. I was requested by you to make a comparison of the bids received on October 27, 1910, with the engineer's estimates of those same bids, especially in relation to the contracts which were let later without readvertisement.

Q. Now, Mr. Seaman, that means that the engineer, prior to

the bidding, had made an estimate of what the prices might approximately be, and we are now speaking of the original bids, are we? A. We are now speaking of original bids as compared with the engineer's estimate.

Q. The original bids were made when? A. October 27, 1910.

Q. Now then, you have got the engineer's estimate and you are going to give us the bids that came in October, 1910, and compare them with the estimates? A. That is correct. The only sections, as I recollect, which were afterwards let without readvertisement were sections 6, 8, 10, 11, 12, 13 and 15. On section 6 the engineer's estimate was \$3,391, 605. The lowest bid was by Bradley, which was \$3,634,213 or \$239,608 above the estimate.

Q. Then there was notice at once upon that section that the bid was a high bid, though it was the lowest of the bids it was a high bid, for it was more than \$200,000 above the engineer's own estimate. A. Yes. On section seven the engineer's estimate was \$3,657,625. The lowest bid was received from C. H. Beckwith at \$2,750,463. That was \$907,162 below the estimate but was not let.

Q. Do you know why that was not let? A. I do not.

Mr. Hotchkiss.—That contract was let to Beckwith, and Beckwith defaulted.

Q. (By Mr. Moss).—Do you know the date it was let, Mr. Hotchkiss?

Mr. Hotchkiss.—At the same time the Bradley contracts were let.

A. (By Witness).—The next section, 8, the engineer's estimate is \$3,181,406. The lowest —

Senator Lawson.—Just a minute. What figure was that let at?

Mr. Harkness.—At the figure Mr. Seaman read; I don't know what it was afterwards.

A. (By witness).—The next section, No. 8, engineer's estimate was \$3,181,406. The lowest bid was by Bradley, \$3,369,484.



This was \$188,078 above the estimate. The next section which was let was section 10. The engineer's estimate was \$3,222,980. The lowest bidder was Bradley, at \$3,253,072. This was \$30,092 above the estimate. The next section, No. 11, was estimated at \$2,980,232. The lowest bid was by Bradley at \$3,132,145, which was \$151,913 above the estimate. These four sections, 8, 10, and 11, bids for which were received on October 27, 1910, were awarded to the Bradley Contracting Company July 21, 1911. The next section which was awarded without readvertisement was No. 12. The engineer's estimate was \$3,233,569. The lowest bid was by Oscar Daniels, who bid \$2,825,740. This was \$407,829 below the engineer's estimate.

Q. Now, when was that contract let? A. The contract was awarded September 13, 1911.

Q. Well, that is the contract that was let nine months later? A. It was let two months after Bradley and was let eleven months after it was advertised.

Q. Yes, and your figures would show (I want to know if I am correct), your figures would show that by the lapse of time the city, in the case of Daniels' route, got the benefit of the reduction in price of materials and got the benefit of the declaration by the Court of Appeals that the Labor Law was unconstitutional, so that the Daniels bid was \$400,000 less than the engineer's estimate, which had been made long before. Am I right? A. No, that is not correct. The Daniels bid was made at the same time the Bradley bid was made and under the same labor conditions, but was not awarded until eleven months afterward. It does not indicate, as I see, that if this were again readvertised that Daniels himself, because of changed labor and material conditions, would not have bid still lower, probably he would.

Q. But it does show that the Public Service Commission was awarding contracts to Bradley at figures largely in excess of the engineer's estimates and delaying the awards to those who were below. A. That is correct.

Q. That is what it shows? A. That is correct. The Bradleys' four estimates were \$609,691 above the estimates. Daniels' one bid was —

Q. That Daniels contract was awarded two months later than

the Bradley contract, though it was a very much better contract in points of figures for the city? A. That is correct.

Q. Do you know any circumstances why there was a delay in the awarding of the Daniels contract? A. I don't know anything about that. The next section is section 13. The engineer's estimate is \$3,816,410. Bradley's bid of October 27, 1910, was \$4,071,406. This was \$254,996 above the engineer's estimate.

Senator Lawson.—Was that bid readvertised?

A. That bid was awarded without readvertisement and it was awarded November 17, 1911, or more than one year after the bids were received.

Q. (By Mr. Moss).—And who got that?

A. Bradley.

Q. Was Bradley the lowest bidder? A. He was on that section in that bidding.

Q. Why couldn't that contract have been readvertised if a whole year had gone by? A. I don't know anything about that.

Q. (By Senator Lawson).—In your judgment it could have been?

A. In my judgment it could have been. The next section which was let without readvertisement was section 15. The engineer's estimate was \$4,215,436. The lowest contractor was Haggerty, Drummond & Co., who bid \$3,820,129, or \$395,307 below the engineer's estimate. This was awarded on the same day that section 13 was awarded to Bradley, on November 17, 1911. I believe that covers that.

Q. (By Mr. Moss).—Were the engineer's estimates full?

A. The engineer's estimates, I presume, were made under data collected while I was chief engineer, although I had nothing to do with the active preparation of these plans for several months before my resignation, and there was a good deal of discussion as to whether they were full enough. One of my assistants was very outspoken that they should be raised fifty per cent.

Q. Who was that? A. That was George Clark, and when I reprimanded him for it he said that Mr. Craven also thought it should be raised. One of the commissioners was very urgent that the estimates were too low, Mr. Bassett, but I insisted that the esti-

mates were full and had ten per cent in them for contingencies. The subsequent bidding shows they average within three per cent of the estimate, and if one difficult section were omitted, they were below the estimate, so the estimates were not too low.

Q. Well, there is this circumstance in the figures which you have given us. I think all of the Bradley bids that you have mentioned were above the engineer's estimate and all of the bids of persons who were not Bradley were below the engineer's estimate. A. That is correct.

Q. So that would not look as though the engineer's estimates were fifty per cent too low? A. No, that was an error of judgment on Clark's part, and if Craven did accord with him, as I never asked Mr. Craven, it was an error of judgment on his part.

Q. Now, will you proceed and further state your examinations? A. You also asked me to compare the prices bid by Bradley with the prices bid on the sections in case there was a section bid on by Bradley. In doing this I selected section 8, taking the quantities of section 8, and have fixed the prices and costs as bid on section 8, October 27, 1910. With them I have compared the prices on section 9, the adjacent section, received on December 5, 1911. This indicates that by using the prices of section 9 to the quantities of section 8, that the bid on section 8 would have been reduced \$498,341, or sixteen per cent. That is, on the quantities in which there were bids from both contractors. Sixteen per cent of the entire bid of section 8 amounts to \$539,117 dollars, which would have been a possible saving by readvertisement.

Q. With the physical conditions substantially alike? A. Well, as I recollect, they were not sufficiently different in the engineer's estimates. Mr. Bradley also bid on the readvertisement of this section 9, and his bid was above the lowest bidder by \$661,509, or 33.7 per cent. I do not remember that Mr. Bradley bid after that on any section. The next section for comparison was section 10 compared with these same prices of section 9, received on December 5, 1911. This indicates that if this section had been readvertised there would have been a saving of fourteen per cent, or of \$455,430. The next section compared with prices of the adjacent section, No. 12, which was readvertised. This indicates a saving of 12.9 per cent or a possible saving on the total contract of

\$404,053. The next section was section 13. This was also compared with the prices of the adjacent section, No. 12, which was readvertised. This indicates there would have been a saving of 18.8 per cent or \$765,426. I think that completes the comparison.

Q. Have you got the totals there in those later comparisons? Have you got the matter together? Those are Lexington avenue route? A. Yes.

Senator Lawson.—What amount do you figure, in your judgment, would the city have saved if all the Bradley contracts had been readvertised and relet at presumable prices according to your figures?

A. I think I testified last time to that. It was over \$3,000,000.

Q. Three million dollars would have been saved to the city?

A. Yes, that is, if all those sections were readvertised, not only Bradley's but others as well.

Q. That testimony of yours is, of course, an opinion based upon the investigation which you testified to the other day and which you have testified to to-day? A. Yes, sir.

Q. And this form of comparison which you have made to-day brings you practically to the same position that you got into in the other form of comparison on the other day? A. Yes, sir. This is a different method.

Q. You have applied two methods to this situation and both bring to about the same result. A. Yes, although I have found I have not totaled these, I can do it in a minute.

Q. Do it, please. A. Now, I find that I have not compared section 6 with any adjacent section, because there was no adjacent section to compare with that which could be fairly compared with it. It was below Forty-second street, but if I take the savings of the four sections, 8, 10, 11 and 13, and add to that estimated saving of fourteen per cent on section 6 I get a total saving of Bradley's contracts alone of \$2,639,370.

Q. Was section 6 discontinued after a few months? A. Section 6, as I recollect it, was let and then was discontinued after the route was changed.

Q. And what had been expended upon it was lost? A. Well, of course. That is, there may have been other reasons for doing it.

Q. Oh, yes. Now, have you been informed of any reason why

these contracts were given to Bradley in this way? A. No, I don't recollect any reason why they were given to Bradley in that way except that possibly Bradley might have been working with the Commission in accomplishing other purposes; for instance, the Bradley, Gaffneys & Steers bid had been through the guidance of Bradley, and the Commission and the city were probably benefited by the existence of that bid.

Q. That was cost plus fifteen per cent? A. Yes.

Q. Did you see any evidences of tenderness towards Bradley in any other matter besides these? A. I don't know as I know just what you mean by "tenderness" towards Bradley.

Q. Favoritism.

Senator Lawson.—Extreme consideration.

A. Well, Bradley was a powerful factor. He is a large contractor and influential man in the city and in accomplishing big work they have to co-operate with big interests; that is a matter that you must get from other sources rather than from myself.

Q. Do you know anyone who, in the last analysis in the Commission, was responsible for the letting of these contracts to Bradley? A. Well, I don't quite understand what you mean by "last analysis."

Q. Did it come down to any particular person? A. I can't say that it did; I wasn't in the employ of the Commission at that time.

Mr. Schuster.—While you were the engineer of the Commission, were there any similar contracts let under your administration?

A. The contract for the Fourth avenue subway in Brooklyn was let while I was there.

Q. Now, from your experience, can you tell us who was responsible in those instances in connection with the Commission? A. They were made under my recommendation, I believe in every case.

Q. And you assumed the responsibility? A. Yes.

Q. And would you say that responsibility has continued to lie with the engineer of the commission? A. I can't say as to that.

Senator Lawson.—Wouldn't that be the usual thing?

A. That would be the usual course, of course, but I can't say.

Senator Towner.—Do you know of an instance of favoritism having been shown Bradley that you could specify?

A. I don't know that I could say that I have.

Q. Then you don't know? A. No, I don't think that I know of any particular instance.

Q. (By Mr. Moss).—Now, I was asking you, a few minutes ago, if you knew of any circumstances where consideration will be given to Bradley. Do you know of any instance in which the Bradleys were allowed a large sum of money for extra work, more than the engineer would stand for?

A. Well, now, you are touching upon a point upon which there has been a good deal of controversy.

Senator Towner.—His question is "Do you know——"

Q. (By Mr. Moss).—Do you know of any incident in which the Bradleys were allowed approximately \$200,000 for extra work against the protest of the chief engineer?

A. Well, you are evidently touching upon the Duane street sewer, extra. That was not, as let, \$200,000; it was approximately, as I recollect it, \$100,000 beyond the engineer's estimate, perhaps a little less than that.

Q. But wasn't there an extra in it? A. That was extra and there were extras besides. The extras, as I recollect, approximate \$100,000 to \$150,000.

Q. Was there in that case any controversy between the chief engineer and members of the Public Service Commission upon that item? A. On the item of extras?

Q. Yes. A. It didn't come before the chief engineer in any way. It was allowed without reference to him.

Q. Well, it was allowed without the chief engineer's consent, wasn't it? A. The item of extras of \$148,000 I don't think came to the chief engineer's office in any way. It was allowed by the commissioner who took charge of the work.

Q. Who was that? A. Mr. Bassett.

Q. He took the responsibility of allowing that without going to the engineer? A. I presume so.

Q. Wasn't the engineer consulted about it? A. The chief engineer was not.

Q. Wasn't there a chief engineer? A. I held that office.

Q. Were you in active service? A. I was.

Q. Was some other engineer consulted who was not the chief engineer? A. I don't know; my recollection is that one of my assistants was consulted in a general way.

Q. Wasn't it known that you were opposed to the item? A. I think it was.

Q. How had you made your opposition known? A. I had been opposed to not merely the item but the method of prosecution of the work. It was a very difficult and a very unusual situation. We had a section, section 901 as I recollect it, which was well under way when for some reason, whether it was because of the enlargement of terminals, or what, I forget, but we found it necessary to make a large off-line sewer connection with the North River down to Duane street. That sewer had to be completed and in operation before certain portions of the larger contract should proceed. The estimated cost of that sewer was about \$165,000 and the question arose as to whether that extra work should be let separately, as a separate contract, or should be undertaken by the contractor already on the work as an extra on that work. It was a matter which was carefully considered in every phase. If we stopped——

Q. By whom? A. By myself, principally, but I talked with my assistants and talked with others. If we stopped to readvertise that work, it meant a delay which we could ill afford because that sewer must be gotten out of the way before the general work could proceed beyond a certain point. There was another important consideration and that was, when a contractor is already on the work it is a difficult thing to obtain fair, earnest competition against that contractor. There is no set rule; it is more or less a general agreement among contractors. If we had received high bids for that work, as high as a contractor wanted me to pay him in bulk sum for the work, it would have prevented our doing it on a percentage and awarding him what we term a reasonable cost because these high bids would have been cited as a reasonable cost as against our own estimates. There

was still another objection to advertising it as separate work and that is, on the other hand, if we had received a low bid for that work, a low bid would not have come from the contractor already on the work but would have come from an outside contractor, and in that case he would have had in his hands a key to the prosecution of the larger contract, and if he had been dilatory or laid down on his work, he could have made claims and forced us to payments which would have been the only way out of our difficulty. Such an instance happened in my own experience in the bridge department, I believe in the summer of 1907. We had in the Manhattan anchorage of the Queensboro bridge, as the bridge was increased in weight, we had to increase the strength of that anchorage and we let a contract, as I recollect it, for some \$5,000. The contract had hardly been let to an outsider before difficulties arose and he needed fifty to sixty per cent extra to proceed with his work. If that had happened on the Wayne street sewer we would have run up to \$300,000 which the contractor wanted as a fixed price for that bid. Taking the whole thing into consideration, it seemed to me advisable that we proceeded under the contract already let and consider that as an extra to be done at reasonable cost. I forget the exact wording.

Q. That was within the province of the chief engineer. A. It was, to recommend. I think this Commission probably took the final action.

Q. And where was the point of difference between you and the Commission in this matter? A. The difference began when the work commenced and these contractors apparently were increasing the cost more to increase their percentage. I then wrote them that they were not being paid on a percentage, that they would be paid only a reasonable cost for doing the work, no matter how much it might be increased or what the percentage might amount to. If the work had been prosecuted economically and energetically, I am not sure but what fifteen per cent would have been a fair percentage, but if the contractor was dilatory, the only thing to do was to fight such a situation. The apprehensions of the division engineer seemed to be confirmed by the data which he presented and —



Q. Who was the division engineer? A. I think at that time it was Mr. Amos L. Schaeffer and I wrote my letter, as I have already described, to the contractor. I then called in several sewer experts and asked them to estimate the proper cost of this work and those estimates, in my recollection, varied from about one hundred and forty-five to about one hundred and ninety-three thousand dollars, showing that our estimate of \$165,000 was reasonably correct. I did that for purposes of final settlement in case the costs were artificially increased. When it was still further reported that these costs were running up, I instructed the division engineer to cover his work with the inspector and obtain all the information possible to be used on a final trial to show that the cost was artificial and that our estimates were correct.

Q. I am going to file, so the Committee will have it, the details of this statement. I will just mark it as an exhibit. Have you finished your statement now? A. I think I have told you enough about it.

Senator Lawson.—You say you have told us enough. Is there any more you can tell us?

A. It might take a week —

Mr. Moss.—I don't want to get into a long story; that may come at a later time, all that I want to bring out this time was whether you believed in that Duane street matter the Commission or somebody had shown partiality to Bradley.

A. We had a difference.

Q. Did you believe that there was a partiality shown to Bradley? A. Well, you can't say it was a partiality, because there was no one but Bradley under consideration.

Q. Well, a favoritism, then? A. Well, I felt that they took Bradley out of a hole.

Q. Well, have it your own way. Did you and Mr. Bassett and Mr. McCarroll have any conversations about this matter? A. Mac was not in it; Mr. Bassett and I had many.

Q. Did you express your objections to Mr. Bassett? A. Very decidedly.

Q. What did Bassett say? A. He insisted on prosecuting the

work in a certain manner to which I objected and didn't feel that I could be responsible for.

Q. Will you explain that? A. I thought we were going to leave it.

Q. I know, but what about the pay rolls? A. Well, these inspectors, that I have already described, began to collect data and I was finally informed, I believe it was first by George Clark and later by the sewer engineer, that data had been obtained which would throw the contractor out of court and I informed them that was just the data I wanted and I wanted more of it.

Q. What kind of data was it? A. It was pay rolls and things of that kind, and showed artificial increase of cost.

Q. On which he was going to get his fifteen per cent? A. Yes, and which I was going to use ultimately, to throw him out of court. Mr. Eustis, who was a member of the committee in charge of this, the committee in charge of this were Commissioners Eustis and Bassett, and Mr. Eustis called me down for spending too much money on inspectors. I told him my purpose for the inspectors and what I had accomplished and he made no further criticism of the employment of the number of inspectors. The next month, I think it was, when Mr. Bassett's turn came to take charge of this thing, he was also worried by the continued increase of the cost of the work and he asked where it would end. I told him I couldn't tell where it would end, but I told him what I was doing and that I didn't propose to pay more than the highest engineer's estimate. I might go beyond my own to cover any possible errors, but I didn't propose to pay more than \$193,000, although the contractor had asked for a fixed sum of \$300,000. He asked if I would guarantee that no payment beyond that could be made and I told him I didn't know, as it largely depended on the law department. He then insisted that I take detailed control of the work, that I assume direct control of the contractor's men, assign them the work they were to do and manage the work as the contractor himself would. This I refused to do, because it would have been an easy matter for the contractor's men, by dilatory work or by other connivance, to run up the expense in the same manner and the engineer directing the work would have been responsible for that increase of cost and it would throw my data obtained by the inspectors all out.

Q. The city would have had no appeal? A. Yes, it would have spoiled the case. Mr. Bassett then went to the Commission and the Commission, after consideration of the whole question, wrote me formal instructions to (as they called it) manage the work under the control plan. With those formal instructions I had to conform. I called my assistant in and told him to report directly to Mr. Bassett and assistant counsel, Mr. Harkness, and to run the work as they wanted it, to simply keep me informed of what was being one. I didn't propose to be responsible for the result. They were exactly as would be anticipated. The cost ran up to over \$300,000 in doing that work and there was no appeal, and there is where the trouble arose.

Q. In what work did this sewer come? A. It came as an offshoot to section 901, adjacent to the Municipal Building, on the Center street loop.

Q. Did you resign from your position? A. I resigned from my position in September, 1910.

Q. Will you state why you resigned? A. Because of general conditions that arose. Such conditions as this. I was not willing —

Q. You couldn't stand for them? A. Of course, my reputation was of some value to me and it would not stand that sort of work.

Q. Mr. Craven was your assistant, wasn't he? A. Mr. Craven held the title of my assistant; he was not actively engaged in assisting me, he was engaged in other work most of the time.

Q. How long had you been chief engineer? A. Three years, and consulting engineer of the bridge department for two years.

Q. I think that will do, Mr. Seaman.

Mr. Seaman is excused and leaves stand.

MR. HARKNESS takes the stand:

Mr. Harkness.—The Committee will please, before leaving the matter of the Duane street sewer — I would like to say that that whole subject was thoroughly investigated in 1911, and as long as that has been gone into here, I would like to ask the Committee to put into the record if the board have submitted the report. I will send that to the Committee. Then, in regard to these Lexington avenue contracts, I would just like to make this suggestion to

the Committee with any further investigation. Mr. Seaman compared section 9 with these other sections; he does not show what allowance he made, because of the fact that section 9 was on a different cross-section than any of these sections.

Mr. Moss.— The detailed figures show that, though.

A. (By Mr. Harkness).— I don't see quite how they show. Evidently he took the total amounts and compared them one with the other.

Q. (By Mr. Moss).— No, it is in detail; I handed over a tabulation, here and there was a tabulation on the previous occasion, going into the item.

A. Does he show how much should be allowed by reason of the fact that there was a different cross-section that would be necessary?

Q. Just to this other point, Mr. Seaman probably does not know that these Bradley sections would be furnished.

Mr. Schuster.— What do you mean by that?

A. Within a million and a half of the appropriations.

Q. Do you mean to say that the progress of the work, figuring on an average as indicates that that—— A. Right up close to the final estimate, and they indicate a saving of about a million and a half.

Mr. Smith.— Not the engineer's estimate?

A. No. This would be a comparison between the bid prices and the final estimate.

Q. How does that help in the discussion of Mr. Seaman as to the saving that could have been made by readvertisement? A. It shows that there would have been no margin for the saving; he is basing it on a gross figure.

Q. No, he hasn't figured it on gross figures; he has given us a ream of figures. A. He has figured it on the gross bid, and the prices——

Q. I simply didn't take him, in testimony, over the details; I handed them to the stenographer. A. Those are the bid prices, I should say.

Mr. Smith.—Do you mean to say the work will be completed at the considerable amount less than bid in the contract

A. Yes. You must realize, Mr. Smith, that work was not bid on a lump sum.

Q. And there will be some saving over these gross figures?

A. Yes.

Q. (By Mr. Moss).—Well, there is room for saving when there is a total figure of \$3,000,000.

A. That is based on Mr. Seaman's assumption.

Q. Surely, and you are giving us some assumption, too. Now, then, I want to ask you, Mr. Harkness, to tell the Committee about a certain matter with the New York Dock Company, regarding a situation in the subway at the foot of Clark street, Brooklyn, leading to some negotiations with the dock company just a little history of that, and after you are through I am going to call Mr. Cedarstrom.

Mr. Seaman, what do you say in this matter about unit prices?

Mr. Seaman.—Well, Mr. Harkness has stated if these new bids were received on changed sections, these changed sections were reduced in quantity and the smaller the quantity the higher the unit price. Therefore, would have been a more comparative change in the figures shown; reduced in quantity and difficulty, too.

Mr. Moss.—Well, your position stands, regardless of this.

Mr. Seaman.—Certainly it does not show as bad as it would be.

Mr. Moss.—That is, it is worse?

Mr. Seaman.—Yes, it is worse than I showed.

Mr. Harkness.—I will have to go back a little to get the general situation. The New York Dock Company owns the most of the water front between Fulton street and Atlantic avenue, in Brooklyn. I think it extends beyond even Atlantic avenue for some distance. The so-called Brooklyn and Manhattan tunnel was let in 1902 and that involved placing a tunnel under the river, entering Brooklyn at Joralemon. The New York Dock

Company owned the piers at the foot of Joralemon street and it was necessary to condemn through that property. The rapid transit board started proceedings and then afterwards, because of difficulties with the dock company, it was necessary to institute a fee proceeding. Those were carried through and the tunnel was built and title to the property vested in the city. Then we laid out the dual system that involved two more tunnels, one from Oldslip to Clark street and the other from Whitehall street to Montague street. Montague street—it's foot was claimed by it, and the dock company claimed it had some easement in slip. Clark street was owned by the New York Dock Company. We had considerable negotiations with the Pierreponts for it and property at the foot of Montague street and they fell through. At the same time we were negotiating with the New York Dock Company for the rights at the foot of Clark street so as to carry through the Clark street tube.

Q. (By Mr. Moss).—That is pretty deep there, isn't it? Have to use an elevator?

A. It is quite deep.

Q. Of course, if there had been a type of tunnel used which did not have to be put so deep, you would not have had to go down so deep. A. Well, it would have been necessary to go down deep to keep within the limits set.

Q. That was only thirty-five or forty feet. A. Yes, Mr. Stevenson took up with the New York Dock Company the matter of acquiring the rights and I think their first figure was something like \$500,000 for easement. At that time we had Joralemon street on hand and we were making no use of it. I asked Mr. Stevenson, in negotiating with the dock company, to work out a general plan so as to give us the necessary rights through Clark street and also make some arrangement for Joralemon, and possibly Montague, the situation being that in Joralemon street the tube is just overlaid by a certain layer of mud and the commission had always planned more permanent plans of protection, either a concrete plank to put over the tubes, costing possibly \$100,000 for each set of tubes, and would also be disadvantageous in filling up the slip to a certain extent, or to build a pier, and what Mr. Stevenson took up specially was some

plan to utilize these slips and instead of damaging them by putting on concrete planks, to work out some general arrangement with the dock company whereby the dock company would put in piers at the foot of these streets and not only improve the property on the one hand, but insure absolute and adequate protection for the tunnels on the other.

Q. But you had worked out plans, hadn't you? A. Mr. Stevenson worked out a plan for the dock company.

Q. There was a plan, then, that the Public Service Commission and the dock company had practically come to an agreement on? A. Yes. The plan in general was this: That the New York Dock Company was to convey us the necessary easement at the foot of Clark street for \$275,000 and then were to take over the Joralemon and Montague for \$100,000, making a net payment by the city of \$175,000 coupled with the construction of piers and generally to utilize the property as not to interfere or endanger the tunnel construction of operation in any way; that was the general scope of the plan.

Q. Now, what happened to that plan? A. The Commission agreed on it, acted formally and then under——

Q. You mean it came up before the Commission in the regular way and was accepted? A. It was acted upon both by the board of directors of the New York Dock Company and by the Commission and the Chairman was authorized to sign the necessary agreement, when approved by the sinking funds, under the Rapid Transit Act, the sale of unnecessary profits have to be approved by the sinking fund. The matter was transmitted officially by the Commission to the sinking fund commission and objections were made in the sinking fund commission.

Q. Who comprised the sinking fund at that time? A. It is made up of the mayor, comptroller, president of the boards of aldermen and I think the chairman of the finance committee of the board of aldermen, and the chamberlain. The objection, as I heard it in the sinking fund commission, would seem to go to the point that the city's policy was against selling off any water front property.

Q. Who made the objection? A. I think — I can't tell who raised it first, I think it was possibly the chief of the bureau of contract supervision, Mr. Adamson.

Q. Didn't it originate with the dock commissioner? A. I don't think so, because up to the time the commissioner sent this matter to the board of estimate we thought the dock commissioner was entirely favorable.

Q. Did you think the dock commissioner was favorable to your plan? A. Yes. Just this other point in regard to the municipal control of water fronts. We insisted that the New York Dock Company, as one of the terms, that there should be a recaption clause in regard to these properties, whereby the city could take these properties back at any time by paying the price the New York Dock Company paid the city plus the cost of improvements, less commission.

Q. That of course would restore the water front at any time? A. It meant the city would lose nothing by selling the property because the dock company, on resale, could not get enhanced value.

Q. Then this objection came up in the sinking fund commission. How did it proceed? A. The matter was referred by the commission — perhaps not formally, to Commissioner Whitney himself, and we had a number of conferences with the mayor and members of the sinking fund commission about it, but the mayor and his advisors, as the discussion proceeded, were very strongly opposed to selling any of the city's water front. That seemed to be the basis of their objection, that the city should always control the water front.

Q. You say the mayor and his advisors. Who were the advisors? A. Well, Mr. Dewar and Mr. Adamson, and finally the matter came into the hands of Dock Commissioner Smith. During the discussion the point was raised whether the transaction would come within the provisions of the charter, declaring water-front property inalienable. I prepared a memorandum which satisfied the counsel of the Rapid Transit Company of that.

Q. Did Dock Commissioner Smith change his position? You said he had favored it originally. A. As I recollect it, we had some conferences with the corporation counsel and the deputy comptroller and others just before the matter went to the sinking fund commission, and I think that Dock Commissioner Smith told the corporation counsel that he thought the plan was satisfactory from a financial standpoint.



Q. But there was some talk on the part of the dock commissioner that he thought originally of going away back to 1904, that it would have been better if the rapid transit board had continued with the dock department in acquiring that property, but I think you said as the matter went long through the sinking fund and got into the hands of the mayor and his advisors that it then got centered in Mr. Smith's hands. A. Commissioner Smith, after the policy was decided in the board of estimate, took charge of it and carried out the formal negotiations; it was after —

Q. He worked out the plan that the sinking fund decided upon? A. Yes. Well, he was in conference with members of the sinking fund all the way through.

Q. Did the sinking fund commissioner overthrow your plan? A. Yes. It finally worked out this way, that as we get the substantial results, costing us, I think, \$12,500 more, but after the action of the sinking fund and Commissioner Smith's negotiations, it finally worked out we had to pay the New York Dock Company \$300,000 for the Clark street easement, which was \$25,000 more than we intended, and then instead of the dock company paying us \$100,000 for these other properties, the city took them over at \$112,500 for two, so the dock company got \$300,000 without having to pay the salvage on the other, and our Rapid Transit Company was really increased \$12,500.

Q. Then, you think the result was not of advantage to the city? A. I do not. I think it was a case of carrying this principle of municipal over-control too far. I think with our plan we would have accomplished the same result.

Q. How much do you think the city lost on the operation as between the two plans? A. Well, the city has that property now, whatever it may be worth. I think it is largely a sentiment value, but the commission has since turned over the Montague and Joralemon streets to the dock company.

But it means that we had to pay out \$300,000 under this changed plan, and the city, through the dock department, had to pay out and turn over \$12,500, so that meant an expenditure of the city funds, directly and indirectly, of \$412,500, whereas our plan only contemplated a net expenditure of \$275,000. I don't know what the terms of lease entered into by the dock department and the New York Dock Company, just what payments they provided for.

Q. Did you ever have any personal negotiations with Mr. Hotchkiss? A. Yes, sir.

Q. Will you tell us about them? Who did Mr. Hotchkiss represent? A. The New York Dock Company.

Q. Charles E. Hotchkiss? A. Yes, sir. When Mr. Stevenson had agreed with Mr. Hotchkiss and Mr. Halm, the president of the dock company, upon the general terms, he took the matter up with me, and then I referred to Mr. Reigerman to draw various legal papers, and Mr. Reigerman drafted those, I took them and advised them and took it up with Mr. Hotchkiss and reached an agreement upon the form of papers.

Q. Now, supposing I call Mr. Cedarstrom for a minute, if you will remain.

MR. CEDARSTROM called to stand:

Q. (By Mr. Moss).—Mr. Cedarstrom, in your capacity as real estate expert for the Public Service Commission, in which you have already testified in other matters, did you have something to do with this New York dock matter? A. Yes, sir.

Q. And did you come in contact with Mr. Hotchkiss, the attorney for the New York Dock Company? A. Yes, sir.

Q. Do you remember seeing Mr. Hotchkiss in company with James B. Walker? A. Yes, sir.

Q. You remember the time when an agreement had been reached between the Public Service Commission and the New York Dock Company and it was about to be submitted to the sinking fund, you remember that time? A. Yes, sir.

Q. Do you remember calling upon Mr. Hotchkiss with Mr. Walker after that point had been reached and having a conversation with Mr. Hotchkiss? A. Yes, sir.

Q. Will you state that conversation; the conversation in which it was mentioned that some one had called upon Mr. Hotchkiss? A. After the New York Dock Company and the Public Service Commission had reached an agreement and the matter was about to be submitted, or had already been submitted to the sinking fund for approval, I received a telephone call from Mr. Hotchkiss that something very important and special had occurred in his deal between the Public Service Commission and the New York Dock

Company and he desired that I see him as soon as possible. I told him I would be right down to his office. I saw Mr. Walker, the assistant secretary to the Public Service Commission, and I informed him of this request of Mr. Hotchkiss. I told him there was something important in reference to that matter and it might be well for him to come and see what this very important matter was. Together we called on Mr. Hotchkiss, and Mr. Hotchkiss said that during some transactions in his office there that somebody had suggested that if the New York Dock Company wanted that approved by the sinking fund it might be well to employ them. That is about the substance of it. I told him as far as I was concerned I didn't see any need to employ anybody to put the matter through the sinking fund, because they had agreed on the terms and I thought it ought to stand or fall of its own weight, and when I returned to the office I reported to the secretary, Mr. Whitney, the facts, and I left it at that point.

Q. Now, these persons who were to be employed. Did Mr. Hotchkiss say they were lawyers or what they were? A. No. He said that the proposition had not been made directly to him, but, as I understand, some member of the firm. I didn't make any inquiries of Mr. Hotchkiss as to who it was. It seemed to me he didn't intend to give any information along that line. I think that later on I saw him and I told him that if he could see his way clear I would like to put up a job on those people and nail them.

Q. What did he say to that? A. He said he would take it under advisement, and, as I understand it, the office didn't consider it good policy to go along that line.

Mr. Moss.—Now, will you step down and Mr. Hotchkiss kindly take the stand?

CHARLES E. HOTCHKISS, having been duly sworn, testified as follows:

Q. (By Mr. Moss).—Mr. Hotchkiss, you were and are still counsel for the New York Dock Company?

A. Yes.

Q. Will you kindly tell the Committee who it was that sug-

gested that they be employed in this matter? A. I don't know. No suggestion was made to me.

Q. Well, who was it made to? A. All I know about the matter was this, that after Mr. Cedarstrom and I had had a good many conferences, and, so far as I knew, had reached an informal tentative agreement, one of my partners asked me how I was getting along with this matter, and I said entirely satisfactory so far as I knew, things seemed to be all right. He asked me if I needed any assistance, and I said no, I don't think I do. I think the Public Service Commission and ourselves were in accord practically, and I had been told that various individuals constituting the sinking fund had expressed themselves informally approving the general scope of these plans.

Q. You thought the sinking fund was practically agreeable to the plan? A. I was told that some of the individuals constituting the sinking fund has expressed themselves as in accord with this general plan, so that under those circumstances I didn't think it needed any assistance or any counsel. So just at that time we had, I don't remember whether we had reached a written form of agreement or whether we had simply reached an agreement informally, the Public Service Commission said they wanted to make some announcement to the public of satisfactory conclusions of our negotiations, and wanted to know if I would see Mr. Cedarstrom and somebody with the publicity bureau, and Mr. Cedarstrom and Mr. Walker came down to my office and wanted to know if we couldn't get up, together, an article to show that we were in accord in our statement of facts and subsequent contracts. I think I never thought much about publishing a lawyer's effort or what he did, but if they wanted to prepare something I would prepare a statement of facts and if they wanted to publish them they could, but I didn't care anything about it. Then I think it was while I was preparing a statement of facts I asked Mr. Cedarstrom if he would come and see me; I wanted to see him about that matter and also about something else. So he came down and I said to him, "How are things going?" He said, "So far as I know everything is all right. We have practically reached an accord and we are going to publish it." And I think he stated at that time that he was quite sure that certain members of the

sinking fund were in accord on informal statements that had been made to them as to what the substance was of this agreement. I said to him, "Well, do you think there is any need for bringing anybody else into this situation?" I said, "that various departments of the city sometimes work independently, and what is your view of the subject?" Well, he said he didn't see any need of anybody else coming in, that he thought the matter would be treated favorably by the sinking fund commission. So then we passed to discuss this question of preparing the public announcement, and Mr. Walker, I think it was, brought down his prepared statement, and I showed him mine, and together we combined them, and, as I understand it, the Public Service Commission, through their publicity bureau, published this statement.

Q. Were you surprised at the opposition that was met in the sinking fund commission? A. Why, no, I don't think anybody is ever surprised at anything that transpires in the municipal division.

Q. Well, you had every reason to suppose that this carefully formulated plan would go through even the sinking fund, hadn't you? A. No, my experience has led me to know that nothing is done with the municipality or any department until it is signed, sealed and delivered, and I am never surprised at anything or any course or any attitude which any department may take until they have passed it.

Q. Well, what persons suggested that they be employed — either suggested to you or any of your partners? A. I never had any name given to me.

Q. Member of your firm or of the dock company? A. I never had anybody suggest it.

Q. Who are your partners? A. I have nine, I think.

Q. Which of these nine had any conversation with you regarding the dock company? A. As I recall it, it was my partner Auerbach.

Q. Now, Mr. Cedarstrom, where are you? Did Mr. Auerbach mention to you the name of someone who might be employed?

A. (By Mr. Cedarstrom).— No, he did not.

Q. Mr. Cedarstrom, I want you to repeat to Mr. Hotchkiss what he said to you after you got that message from him to come

and see him about something important. A. As I recall it, he told Mr. Walker and myself that some members of his firm had been approached with a proposition that it might be well to retain somebody for the sinking fund and that they would be the proper ones to retain. That was about the substance.

Q. Mr. Walker was there and heard it? A. Yes, sir.

Q. That may refresh your recollection, Mr. Hotchkiss.

A. (By Mr. Hotchkiss).—My recollection is perfectly clear; it doesn't need any refreshing.

Q. (To Cedarstrom).—Tell Mr. Hotchkiss what you said.

A. (By Cedarstrom).—Why simply I would like to get some plan laid whereby we could get that fellow red-handed, whoever he was that suggested that. That was after opposition developed in the sinking fund. As I recall, Mr. Hotchkiss said he would take it under advisement but after while he said he didn't care to get mixed up with it.

Q. What do you think of that, Mr. Hotchkiss? A. Well, I think Mr. Cedarstrom said substantially that to me.

Q. That some plans should be made to trap the person who had the proposition? A. I don't know that that is the exact language but the substance of it.

Q. Who was the person, then, to be trapped? A. I don't know.

Q. Well, who were you informed was the person? A. I was not informed.

Q. That is you say that Mr. Cedarstrom has testified substantially, correctly, that he wanted to have some arrangement made by which these persons, who wanted to get the help of the sinking fund commission in this matter should be trapped and you said they were of such a kind that you didn't want your clients to have anything to do with them? A. No, I don't think I said that. I said the matter was too important for my clients to have any mix-up or anything of that kind, that we were perfectly competent to handle the subject ourselves and that my clients' interests had suffered so long a time in getting any method of operating those properties that I didn't think it was worth while.

Q. But who did you think you were going to have a mix-up with? A. Whoever it was that wanted to be retained, I suppose.

Q. How much fee was expected? A. I don't know.

Q. Was any sum mentioned? A. Why yes, but by whom I don't know.

Q. Well, how much? A. Fifty thousand dollars.

Q. Who mentioned it? A. I don't know.

Q. How did the \$50,000 get into your mind? A. I don't know.

Q. Well, it has got there and it is there now. Now, who put \$50,000 into your mind? A. Why, Mr. Moss, if I could recall I wouldn't have any hesitancy in telling you.

Q. Yes, but I know Mr. Cedarstrom has a pretty good recollection and Mr. Walker has some recollection, too, and I have had this matter in my hands for a good many weeks just waiting for a proper time, a little practice, where we could bring it to a head. Now, Mr. Hotchkiss, perhaps memory can be helped; mine is sometimes. Didn't you understand that the man who came to you or to somebody, who had \$50,000 in his mind in such a way that it was communicated to you, was speaking on behalf of a member of the sinking fund commission? A. No.

Q. Well, who was? A. I have got the figure in mind of \$50,000 but I haven't the slightest recollection of whether that suggestion came from anybody else or whether it was a mere statement why I supposed they would want \$50,000 for doing a thing like that.

Q. Who would want \$50,000? A. The person in question; I don't know.

Q. What do you mean by "doing a thing like that?" A. Doing what was necessary for the harmonizing of the interests and the bringing together an arrangement whereby the New York Dock Company could operate these properties.

Q. Smoothing out the opposition in the sinking fund commission? A. Yes.

Q. Who did you find was in opposition in the sinking fund commission? A. I don't know who was opposed to it. The way I heard the matter was, I can't remember whether it was Mr. Halm, the president of the dock company or whether it was the dock commissioner himself. Anyway, the statement was that there seemed to be opposition to the city's selling any water

front property which they had once obtained title to. There seemed to be a sentiment against, where this question of municipal ownership, especially on the Brooklyn water front had been proved, that there was a sentiment against the sale of the city's recently acquired property.

Q. A sentiment which would be — could be smoothed out by the \$50,000? A. I don't know about that.

Q. Didn't Mr. Halm tell you about that? A. I don't think he did.

Q. Didn't you ever mention the \$50,000 together? A. I don't recall that we ever did.

Q. Weren't they ever mentioned between you and Mr. Halm? A. I think not.

Q. You testified a little while ago that as the matter progressed and that you thought it was all right, that certain members of the sinking fund commission were favorable to it, what members were favorable to it? A. I don't know; it was never told to me. My recollection is that Mr. Cedarstrom said that he understood this matter had been talked over informally with certain members of the sinking fund commission and they seemed to be favoring the proposition.

Q. Why wouldn't you arrange with Mr. Cedarstrom, who rerepresented the Public Service Commission, to smoke out the people who were trying to get \$50,000 in this way? A. I didn't know there was anybody trying to get \$50,000.

Q. Well, what is the difficulty about mixing up your clients with such people? A. Because I felt perfectly competent to handle the New York Dock Company affairs myself.

Q. But Mr. Cedarstrom was proposing a plan by which you and he could get ahold of the fellow that had upset these negotiations. A. No, he didn't propose any plan. Mr. Cedarstrom said to me he didn't know who it was that I was talking about and I responded that I didn't know either.

Q. Then you were talking about somebody. Now, who were you talking about? A. I have told you I didn't know who I was talking about. Now, if you will just let me proceed with this conversation I will give it to you.

Q. Go on. A. Mr. Cedarstrom said that the Public Service



Commission, in their past history in the acquisition of property, especially in Brooklyn, had been met with opposition and efforts had been made to make some money out of real estate deals whereby the rapid transit funds had to pay for it and they had been up against people of that kind, and he would like to smoke them out. "That is all very good," I said, "I wish you would, too, but my interest with my clients would not permit me to ally myself with you for that purpose."

Q. Mr. Cedarstrom, were you speaking about matters in general or about an individual that had been mentioned to you in some shape or form by Mr. Hotchkiss?

A. (By Mr. Cedarstrom).—Mr. Hotchkiss never mentioned the name of anybody, neither did he say that he knew the name, just simply speaking in generalities; that is all. Simply that this proposition had been made to some member of the firm and it was my suggestion that we put some job on him and nail him to the cross.

Q. (By Mr. Schuster).—Mr. Hotchkiss, do you know who opposed the plan in the board of the sinking fund?

A. Why, after the dock commissioner—I had an interview with the dock commissioner—he suggested that he try and work out a new plan because he said the sentiment was not favorable to the sale of the city's property, so by his arrangement I met Mr. McAneny, I think first, and he stated to me (this is the first statement made to me by anybody who was a member of the sinking fund commission), he said to me that the sentiment would not permit the sale by the city. He was the first member of the sinking fund commission who made that statement to me but what his attitude was when the proposition came before them formally, I don't know. Whether he spoke for himself or whether he voiced the majority of the sinking fund, I don't know.

Q. (By Mr. Moss).—What other members did you speak with?

A. I afterwards spoke with the mayor and that was on the subject of working out some substitute plan.

Q. (By Mr. Schuster).—That was after the plan had been thrown over?

A. Yes.

Q. (By Mr. Moss).— Anyone else?

A. Why, I have talked with Deputy Brough about details of the plan.

Q. That was for the new plan? A. Yes. But I never discussed the comparative merits or demerits of one plan against another except that first interview with Mr. McAneny.

Q. Did Mr. McAneny tell you who was opposed to the plan? A. No.

Q. Did anyone tell you who, in the sinking fund commission, had been opposed to the plan? A. No.

Q. Did Mr. McAneny say whether or not he was opposed to the plan? A. No, he used that general language as I say, that it seemed to him a matter of sentiment.

Q. Did you understand whether or not he had opposed it? A. No, I didn't know.

Q. Where did you see Mr. McAneny? A. In the mayor's office during the absence from the city of Mayor Mitchel.

Q. Did any persons talk with you about this dock matter while it was pending who were neither members of the sinking fund commission or of your law office of the New York Dock Company? A. Well, that is a pretty broad question. I should say generally, no. I may have gossiped it to my friends what I was doing but nothing definite.

Q. Did any one outside of these connections speak with you regarding anything that could be done to facilitate this operation? A. No.

Q. You never felt sure that it was going through, you didn't feel that anything was certain in city affairs? A. That is right.

Q. Now, when was it that this conversation occurred between you and Mr. Cedarstrom which he first spoke of? A. Oh, I don't know.

Q. Can you fix it, Mr. Cedarstrom?

A. (By Mr. Cedarstrom).— Approximately. I think it was in October.

Q. What year? A. Of 1915.

A. (By Mr. Hotchkiss).— Well, I won't dispute that.

A. (By Mr. Cedarstrom).— I have tried to refresh my memory.

Q. You have looked this matter up carefully, haven't you? A. No, I only received a subpoena from you a short time ago but I should say it was in October.

Q. Now, you discussed this matter, didn't you, Mr. Cedarstrom, with Mr. Walker? A. He was present.

Q. You talked about it afterwards? A. Yes, many times.

Q. And what other person in the Public Service Commission have you talked with about that incident? A. Why, Mr. Harkness and Mr. Whitney and Mr. Walker, I think that is all.

Q. It was an open secret? A. Yes.

Q. And when you went to propose what you saw proposed to Mr. Hotchkiss, was it with the knowledge of your associates in that office? A. Yes, it was with the knowledge of both Mr. Whitney and I believe with the knowledge of Mr. Harkness.

Q. Then this was a matter that was taken seriously in the Public Service Commission, and they wanted to smoke out, to use an expression of our own, these persons? A. I think it was more my suggestion than it was any one in the Public Service Commission and Mr. Whitney acquiesced and told me to go along that line if Mr. Hotchkiss was agreeable.

Q. I think, Mr. Hotchkiss, we ought to hear from Mr. Halm, the president of the dock company, and from your associate, Mr. Auerbach, so that they could attend this afternoon.

A. (By Mr. Hotchkiss).— Well, I don't know about Mr. Halm, or Mr. Auerbach, as I haven't seen them since the middle of last week.

Q. What is Mr. Halm's full name? A. William E. Halm.

Q. Where is he? A. In the South Ferry building, State and Whitehall streets.

Q. Well, I would like to have you communicate with him, rather than send a process server after him. A. I think he would be willing.

Q. If you find anyone else in the office who has a knowledge of them, I am going to ask you the favor of sending them along at half-past two? A. I may not be able to do that but I will do the best I can.

Q. Well, three o'clock.

Senator Thompson.— Then we will suspend.

## AFTERNOON SESSION.

WILLIAM E. HALM was called as a witness, and having been duly sworn, testified as follows:

Q. (By Mr. Moss).—Your name is William E. Halm, I believe?

A. Yes, sir.

Q. And you are president of the New York Dock Company?

A. Yes, sir.

Q. I want to direct your attention to that matter in which your company came in contact with the Public Service Commission regarding the property at Clark street, Brooklyn. You remember when that got before the sinking fund commission. A. According to my recollection the Public Service Commission agreed upon that formally about October 15, and I presume it was sent to the sinking fund immediately after that.

Q. Was that proposition which you and the Public Service Commission arrived at — was that ever formally disapproved by the sinking fund commission or was it simply adjourned from time to time? A. That is my recollection; I do not believe that it ever came to a vote.

Q. But how long was it pending before the sinking fund commission adjourned from time to time? A. About the middle of December.

Q. Well then, did you withdraw it? A. I did publicly withdraw it, yes, sir.

Q. Appeared before the sinking fund committee and withdrew the proposition? A. Yes, sir.

Q. Did you do that with the concurrence of the Public Service Commission? A. I probably did tell Mr. Cedarstrom that I would take such action unless the sinking fund acted. I was tired of the delay.

Q. Had you been informed at that time that somebody desired to render some service to your company to get it through? A. Oh, I can't put it in that way.

Q. What had you been informed? A. Mr. Hotchkiss, of the firm of Daviess, Auerbach & Cornell, who had been the attorney handling the case with us, asked me one time if I considered it

necessary to employ additional counsel, stating that some suggestion had been made to him. I felt at that time that we had the matter pretty well in hand ourselves and I said so far as I could see there was no need of additional counsel.

Q. Were you aware at that time that there was any opposition in the sinking fund commission? A. Nothing tangible.

Q. Well, had anything come to your mind that was not tangible? Had you sensed some opposition there? A. Nothing more than the ordinary delays, which are inexplicable, in dealing with the city.

Q. Did Mr. Hotchkiss mention any sum that was desired for this additional counsel? A. No, sir.

Q. Did you ever hear the sum of \$50,000 mentioned? A. Not at that time, anyhow.

Q. At any time? A. If so in such a vague way that I don't recall it.

Q. Didn't you hear the sum, \$50,000 mentioned? A. Possibly.

Q. When, possibly, did you hear that mentioned? A. Oh, a very long after, if at all.

Q. Was the name of anybody mentioned? Any counsel that were to be employed? A. No, sir.

Q. Was the name of any one mentioned in your conversation with Mr. Hotchkiss or anybody else who had suggested any such proposition? A. I can't say so.

Q. Well, do you mean to say you have forgotten the name? A. No.

Senator Lawson.—Do you remember whether it was a lawyer or a layman?

A. I don't say that anyone is mentioned.

Q. (By Mr. Moss).—Now, what you say, but do you remember?

A. No one was mentioned to me. Mr. Hotchkiss mentioned no name and no amount. The matter was casual and passed on.

Q. Did you understand that when this proposition went to the sinking fund commission the dock commissioner favored it? A. Yes, sir.

Q. He wrote a letter approving it? A. Yes, sir.

Q. Did any member of the sinking fund commission give you any reason why the proposition was not acted upon? A. At some conversations both with Mr. McAneny and Mayor Mitchel, along in November and December, there was a question raised as to the legality of the sale of lands under water belonging to the city of New York. That seemed to be the reason why there was no doubt whether such a deal could go through.

Q. Both Mr. McAneny and Mayor Mitchel. Well, who expressed a doubt? A. Both Mr. McAneny and Mayor Mitchel.

Q. Expressed that doubt to you? A. Yes, sir, and at a conference prior to that, at which representatives of the comptroller's office, corporation counsel, the Public Service commission and possibly other branches of the city government, discussed this matter, the question was raised at that meeting and it was put up to the corporation counsel as to whether the sale of this land, still being in the possession of the Public Service Commission, was legal and I know the question was raised at that time, and I presume —

Q. What did the corporation counsel determine at — A. He didn't rule on it at that meeting. I believe he afterwards decided it could be done.

Q. That was my information — that he had decided it could be done. A. Yes, still it left a doubt in the minds of the other gentlemen.

Q. Well, did you meet any other member of the commission who voiced any objection or opposition? A. I don't think so.

Q. Did you meet Mr. Dewar? A. No. The only other member was Mr. Prendergast or Mr. Brough.

Q. Mr. Brough simply represented the comptroller? A. Yes.

Q. Now, the matter having been withdrawn by you from the sinking fund because of his inaction, how did it come forward again? A. The dock commissioner interested himself in the proposal and we entered into negotiations for us to lease the property from the city instead of buying it.

Q. Was some proposition made to you by the dock commissioner which you did not entertain? A. Oh, yes, as a matter of negotiations extending over a considerable period.

Q. What was the first proposition he made to you substantially?

A. That he should pay us \$175,000 for the Clark street easement and that we should rent or lease the property at Montague or Joralemon street, paying 5.39 per cent and also paying taxes on the structure we would build on it.

Q. Well, was there some proposition made by the dock commissioner against which you protested? A. Yes, I protested against the proposition; I would not accept it.

Q. Well, here I have your letter of December 17th to the dock commissioner, which ends with this phrase or paragraph:

“Now that the situation has changed and it appears that we will not be permitted to acquire the property at the foot of Joralemon and Montague street, and may even lose possession of that at the foot of Clark street, my protest against adoption of an official plan that would prevent the best possible development of the property now in our ownership.

I gathered from the conversation in Mr. McAneny's office that it was your opinion that if you filed such a map and it was officially accepted by the sinking fund commission, and was thereby made the official map of that section, we would be prevented from exercising the rights of private ownership by making such improvements as warranted by its location and area.

Should your official plan be thus adopted and we be hereby prevented from improving our property, it appears clear to me that its value would be greatly decreased by our inability to properly improve it and I consider that the city would be responsible for the resulting damages.”

That shows your position in those negotiations, doesn't it? A. Well, that brings up a matter that has not been touched on. When it appeared probable that we would obtain this property either by lease or by purchase, the dock commissioner had laid out a logical improvement in the way of piers, the width of waterways, etc., to which I made no objection. When that map was approved by the sinking fund commission it would be very difficult to make any other improvement. Naturally when I found or felt that we were not going to secure those properties I protested against a map being filed that would render us unable to improve

the property that belonged to us, so I wrote that letter reserving all rights.

Q. Yes. Now, Mr. Halm, I will ask you to step aside and remain in the room, because I want you to hear everything that is developed. A. Certainly.

MR. HARKNESS is called to the stand and testifies as follows:

Q. (By Mr. Moss).—Mr. Harkness, did you and your associates in the Public Service Commission take any step or steps to run to earth the person whom you believed was interfering in this negotiation between yourselves and the New York Dock Company?

A. We tried to find out who that person was.

Q. What did you do? A. Judge McCall and Mr. Whitney and myself sent for Mr. Halm, the last witness, and told them in effect that we thought the matter, as their duty as citizens, was to assist us in running this thing to earth. It was somewhat of a practice for people to trade on public officials' names and this was evidently a case of that sort, and we wanted, if possible, to make an example of this man and put a stop to this sort of thing.

Q. Was that conference had at your office? A. It was in Judge McCall's room.

Q. And who was present? A. McCall, Mr. Whitney, Mr. Halin, Mr. Hotchkiss and myself.

Q. What had led you to make such an investigation as you were making? A. The reports of Mr. Cedarstrom, the report as to his talk and Mr. Walker's with Mr. Hotchkiss.

Q. That is the conversations which Mr. Cedarstrom and Mr. Walker of your office had had with Mr. Hotchkiss? A. Yes.

Q. Was there any denial by Mr. Hotchkiss that the conversations had been had as stated substantially by Mr. Walker and Cedarstrom? A. Mr. Hotchkiss said substantially what he said on the stand this morning, except this morning was the first time I heard any figure mentioned.

Q. This morning was the first time you heard \$50,000? A. Or any figure.

Q. What did Mr. Hotchkiss or Mr. Halm say in that conference? A. I think they agreed generally with our point of view on it.



Q. That is, they agreed that you ought to catch this man?  
 A. Yes, but that it was more or less — they were handling a business transaction, and they didn't think that in view of either obligations to the New York Dock Company they could do as we asked.

Q. They didn't want to involve the New York Dock Company?  
 A. No, sir.

Q. Was the name of any individual mentioned in that conversation?  
 A. No, sir, that was the purpose of the conversation in a large part — to get the name of the individual.

Q. Was there any set or click of men mentioned?  
 A. I can't remember that there was.

Q. Was there anything which indicated to you any knowledge as to the identity or the relation of the person that approached them?  
 A. No, sir.

Q. No more than we had here this morning?  
 A. I can't remember that they ever mentioned anything that would give us any clue to the man.

Q. (By Mr. Schuster).— Did you get any impression that they knew?

A. Oh, I believed that Mr. Auerbach knew, that is, I won't say Mr. Auerbach, but the partner of Mr. Hotchkiss to whom this person spoke.

Q. (By Mr. Moss).— Do you know or have you been informed whether or not the name of any person has been mentioned in connection with this matter to any officer of the city government?

A. I understood that; I don't know where the information came from, but that Landstreet, chairman of the board of directors of the dock company, spoke to Mayor Mitchel about the matter, and my impression is that he mentioned some name to him.

Q. That is that Landstreet mentioned a name to Mayor Mitchel?  
 A. That comes to me, Mr. Moss, probably third or fourth-hand and it is only an impression I have.

Q. Did you ever talk with the mayor about it?  
 A. Not to the mayor, no.

Q. Or to any one representing the mayor?  
 A. I talked with Mr. McAneny and Mr. Prendergast.

Q. Was this subject which you have just mentioned of a

communication by Landstreet to the mayor, was that brought up in any conversation that you had with him? A. I don't think so; in any conversation I had with the mayor.

Q. Yes. A. No, sir.

Q. Do you know whether the mayor made any effort to find out about this matter? A. No, I can't say that any information was given to the Mayor.

Q. No, of course not, but I want to know how far you went. A. What we did, Judge McCall and Mr. Whitney and myself put it up as strongly as we felt we could to Mr. Strong and Mr. Hotchkiss and our efforts came to naught because of their refusal, and then we spoke to Mr. McAneny and Mr. Prendergast in the course of another discussion about this thing.

Q. Then you treated it as serious and important matter and considered it so? A. I think it is. I may say this, as I said before, that some people go around town and we have had experiences of it in the work of the Commission, and try and trade on supposed influence they have with public authorities, and our point of view was to expose that thing if we could do it and try to put a damper on it, because in our own work people have tried to trade on and talk about their influence with public officials.

Q. (By Mr. Schuster).—Have you any specific cases in mind? A. Yes, I have one case in mind if the Committee cares to hear it.

Q. (By Mr. Moss).—Anything that you think is pertinent to this inquiry.

A. It is a matter of more or less small fry but I have a situation in mind of finally bringing the matter up, possibly, before the Bar Association, but I think it would be against the public interest to mention that name this afternoon. If you want information in regard to it I would be very glad to turn it over to you, Mr. Moss.

Q. All right. You might do that in any form you like. A. I will talk it over with you in any form you want. There is only this in order to complete the testimony this morning. I gave you the resume of the negotiations in rather a fragmentary form. Before this matter went to the board of estimate, Judge McCall took this matter up, so when the Committee acted we thought he had reason to believe it would be approved.

Q. So there was every indication that it would go through the sinking fund commission? Were you surprised when it was blocked there? A. I can't say I was surprised as Mr. Hotchkiss says, "Nothing is very surprising"——

Q. (By Senator Lawson).—It was inspected? A. Yes, inspected.

Q. (By Mr. Smith).—Your information, Mr. Harkness, was that it was Mr. Auerbach that this unknown person spoke to. A. No, I can't say that, it came to some partner of Mr. Hotchkiss. That is as I remember it.

Q. But you had already expressed your notion that it was Mr. Auerbach. A. No, I said first to Mr. Auerbach but then I corrected myself. I did hear of it as a partner of Mr. Hotchkiss.

Q. And you believe that the mayor has the present knowledge of the name involved? A. I have no belief on that subject. I say I simply heard that Mr. Landstreet has spoken to the mayor about it.

Q. And mentioned the name in the conversation? A. That is what I heard but I have no basis for believing or disbelieving it.

Q. (By Mr. Moss).—Did anybody—after this thing fell down in the sinking fund board, did anybody stand out among the officials of the city as proposing some new plan?

A. No, the plan that was finally worked out resulted more or less from this. There was a good deal of criticism by the mayor's advisers on the plan. They said it was giving too much to the New York Dock Company, unduly favorable to the New York Dock Company, and finally, during one of the conferences in the mayor's office, I turned to the mayor and said to him that if the city authorities had reason to believe that this plan was so favorable to the New York Dock Company that I was authorized on behalf of the Commission to make the same proposition to the city, that is, if they would give the Commission the easements at Clark street for \$275,000 we would turn over the Joralemon and Montague street properties for \$100,000 and the city did go along with the idea of condemning the Clark street properties, but they gave that up and finally it was worked around so we were able to close for Clark street at \$300,000, which was \$25,000 more than on the old deal, and then the city would pay

us \$125,500 for the Montague and Joralemon streets, which was \$12,500 more than we were to get from the dock company. This final arrangement worked out more or less from that plan.

Q. Was there any man who stood out among the city officials as proposing a new plan after the old plan failed? A. I think Comptroller Prendergast said all the way through, that our plan was the better plan financially. We had gone into it on the basis that the city needed every dollar we could save but it finally worked out in the sinking fund commission to more or less a general agreement on the part of the members in favor of this other plan, but the comptroller, I think, stated throughout that he still believed that the Commission plan was the better one.

Q. Now, Mr. Cedarstrom, as I understand it, at the time you received this message from Mr. Hotchkiss, the publicity bureau was ready to make its publication in the Public Service Commission? A. Yes, sir.

Q. Now, will you please to explain to the Committee what is meant by the publicity work of the Commission so we may see the relation of it? A. Why at that time an agreement had been reached with the New York Dock Company and it had tentatively been approved by the certain members of the sinking fund. There seemed to develop an opposition to it as to the reasonableness of the deal and as to whether the New York Dock Company was receiving any great benefit from it as against the city's interests and it was deemed advisable that we should cite our case in the newspapers, and it was with that idea in view that we were to meet Mr. Halm at that time.

Q. Was Mr. Walker the agent in the Commission's employ that looked after this publicity? A. At that time he had entire charge of the publicity end.

Q. The idea was, if I understand you correctly, that as there was some opposition developing in the sinking fund it was thought wise to bring out a statement of the matter and publish it at once so that you might meet that opposition and convince it perhaps. A. And give concrete facts, the basis for the transaction that was capable of being analyzed so that they could either come forward and show that we were wrong or else hold their peace and let the deal go through the sinking fund; that was the primary object.

Q. Was this document published? A. Why yes. I am quite sure it was; in fact, I am positive.

Q. I don't think that is the one; that was after the deal was off. A. Well, let me have the one then. I haven't got a copy of that here, I don't believe. That was after the deal was cancelled that notified the public the deal was off. Mr. Walker, if you will send for him, can bring that over, or Mr. Robinson, who has taken Mr. Walker's place, can bring that over.

Q. Well, can't you state the substance of it? A. The substance of it was just simply stating the proposition as a whole on the agreement we had made, the New York Dock Company was to receive so much and the city was to receive certain benefits from it.

Q. Now, Mr. Hotchkiss knew that was intended, didn't he? A. Yes.

Q. And it was he understood that that was going to be put out that he telephoned you that something had happened that he wanted to see you? A. That is my recollection.

Q. And you understood that it was something that had relation to this notice that was going to be published? A. Well, as to the transaction as a whole; something material to the transaction as a whole.

Q. Had the consent of the dock commissioner been obtained? A. Why, to my own knowledge there was a report on file with the sinking fund from the dock commissioner approving the transaction. I think at that time, or after that; I am not quite sure.

Q. Have you any copy of that with you? A. I have, yes.

Q. Let me see it. This is a letter on the paper of the dock department dated November 8, 1915, addressed to the mayor. It begins as follows:

"I am in receipt of a letter from the Hon. Edward E. McCall, Chairman of the Public Service Commission, transmitting, for copy, an application made by the Commission to the commissioner's of the sinking funds, under date of November 3, 1915, for the approval and agreement of the New York Dock Company, covering the sale of properties and easements in the vicinity of Clark street, Brooklyn."

There are several pages discussing the proposition and the last sentence is as follows:

“In the final analysis, it seems to me to be a matter that can be disposed of quite promptly; to my mind the only question being the value of the land or easements to be acquired.”

Now, Mr. Cedarstrom, acting on behalf of the Public Service Commission, you kept in touch with this proposal and endeavored to have it carried through, didn't you? A. Yes, sir.

Q. I wish you would give the steps that were taken in regard to this matter and how it went into the sinking fund commission, and how it came out. A. The time negotiations were begun?

Q. Yes. A. My recollection is that about October of 1914 I begun negotiations with the New York Dock Company for the acquisition of fee or easement of their property at the foot of Clark street and at that time I think their figure was something like \$600,000 for the easement, or rather the fee at the foot of Clark street. There is a copy of the letter in the Public Service files here that I am reading from.

August 31, 1915.

Q. I hardly think it is necessary to go into it as carefully as that. A. I will go through it in a hurry. Here is a letter addressed to Col. Hayward of the department of docks and ferries, signed by Dock Commissioner Smith, dated August 31, 1915, wherein he states:

“My understanding is now that the New York Dock Company and your commission are negotiating for covering the tunnel with piers along the lines of plans which I advocated in the past and which I outlined to you when we visited the property earlier this month.

Certain matters have been submitted to us by the New York Dock Company which are now receiving our careful study and consideration and which will be the subject of a report during the early part of the coming week.

At this time, I will ask for a conference with your commission and of an opportunity to go further into this matter with you.”

Prior to that there is a report from me to the secretary dated June 14, 1915, in which I approved the condemnation map for the acquisition of the fee at the foot of Clark street. There was a commission appointed to acquire the fee and award damage to the New York Dock Company, according to that condemnation map, and I think Senator Lawson was made the chairman of that committee. After the condemnation map had been approved and the commission appointed, the New York Dock Company wanted to continue negotiations along an easement line, taking an easement instead of fee. A request was made to the corporation counsel to withhold the filing of the \_\_\_\_\_ of the commissioners so the title would not vest in the city, and we continued negotiations. There is a report dated October 7 in the file, wherein I approve certain terms for the acquisition of an easement at the foot of Joralemon street; also the sale of property at the foot of Montague street to the New York Dock Company along lines which had been discussed by the commission and which had been approved, and then to submit it to the sinking fund, for the sale of the property at the foot of Montague street and Joralemon street, the sinking fund having jurisdiction of all sales of properties made by the Public Service Commission but not acquisitions. I find in the file here a copy of the article that was published October 31, 1915.

Q. May I see that article to see how much of it I want? A. Yes.

Q. I will read a portion of this right into the record. It is headed, "For the Publicity, Sunday Morning, October 31, 1915."

"The Public Service Commission and the New York Dock Company have perfected an agreement which it is estimated will save at least \$500,000 in the cost of construction of new subways and will result in the expenditure of approximately \$1,250,000 by the company for the improvement of the Brooklyn water front between Fulton street and Atlantic avenue.

The improvement contemplates the replacement of the existing short piers by five new piers which will be from 640 to 750 feet in length and much wider than those now in use, doubling the capacity of the piers, and making pos-

sible the accommodation of much larger vessels than can be taken care of with the present pier space.

Incidentally, three of the new piers will be erected over the existing subway tunnel in Joralemon street and two over the existing tunnel in Montague street, so that absolute protection will be afforded for those tubes.

The agreement grew out of the effort of the Public Service Commission to obtain rights for the construction of the new tunnel in property at the foot of Clark street, owned by the New York Dock Company and it was necessary to obtain such rights from that corporation. The New York Dock Company owns and operates a large system of piers on the Brooklyn water front and when the matter was brought to its attention, the company immediately pointed out that the taking of its property at the foot of Clark street would interfere with the general scheme of its water front operation and prevent the realignment and reconstruction of its piers, which was then in contemplation."

Now, I will pass over much of this which has already been discussed in the testimony and I find the publicity memorandum concludes in this way:

"The New York Dock Company ——"

First the letter refers to the recapture clause and then says: "The New York Dock Company authorizes the following statement:

"When the three new piers at the foot of Joralemon and Montague streets are built over the subways, they will furnish the ideal form of protection for the tubes and at the same time afford the opportunity to build the type and kind of modern piers required by the commerce which is now crowding the port.

A large part of this section of the water front is used by steamships carrying commerce between New York and the West Indies and South America. This commerce is largely increasing and the steamship lines command at the earliest possible date increased and improved facilities.



The Dock Company has always been ready to co-operate in a generous spirit with the Public Service Commission, in the completion by them of the great public improvement, the subways."

That is all I will read. Now, proceed with your history.

A. The next communication is from the sinking fund dated November 18, 1915, addressed to the secretary of the commission which reads:

"I beg to advise you that your request for approval of the New York Dock Company covering the sale of property at the foot of Joralemon and Montague streets, was on the calendar of the meeting of the commissioners of the sinking fund held this day for the first time for consideration.

In view of the importance of this, the illness of his honor, the mayor, and the short time in which the commission has had to consider the same, the chairman informed Mr. Halm that the board was unprepared to act in the matter but would consider it from day to day and would call a special meeting.

Mr. Halm declined to wait until the board was ready to act in the matter and declared that he would submit it immediately.

Signed by Mr. Tall, Secretary.

Next communication, December 1, from the New York Dock Company to Mr. Whitney, secretary.

"Referring to my notice of even date, withdrawing our proposal in regard to the Joralemon, Montague and Clark streets, I beg to advise you to take into consideration that you have had this proposal under advisement for over four months, without compensation to us, and it seems only fair that we either arrive at a price for the easement without further delay or that you should vacate the premises at once, and restore them to their original condition.

I am advised that the estimated damage is \$500,000 and we now repeat that we feel certain that we would have no difficulty in proving our claim to this amount as a minimum.

Our figure of \$275,000, the original proposal was considered as fair for the reason that with it we would begin to acquire the Joralemon street front.

Unless some agreement is reached very shortly, we will be obliged to inform your contractor to vacate the Clark street premises."

Q. (By Mr. Moss).—Mr. Cedarstrom, what was the date of any letter that Mr. Smith wrote approving this matter; sometime in November, wasn't it?

A. I read that the first one.

Q. I am asking the date of it? A. Approving the acquisition along this line was in August. August 31, 1915.

Q. Wasn't there one in November? A. That was the sinking fund.

Q. There was a letter to the sinking fund, was there? A. Yes, that you have. November 8. That was the letter that you read into the record.

Q. This is the one that I just read? A. Yes.

Q. Now, Mr. Korb is here. This letter of Dock Commissioner Smith to the mayor—has been returned to Mr. Smith?

A. (By Mr. Korb).—Yes, sir.

Q. Did Mr. Smith ask that it be returned? A. Yes, sir.

Q. Mr. Korb produces these letters, one the 28th of November, November 28, 1915, addressed to Hon. John Purroy Mitchel:

"I beg leave to withdraw from the consideration of your honorable board my communication of November 8, 1915, relative to the proposed agreement with the New York Dock Company, with respect to the property in the vicinity of Clark street."

He follows with other language and signs it "By Mr. Smith." That is followed by a letter of December 27, 1915, addressed to Mr. Brough, as deputy and acting comptroller, signed by Mr. Smith, and says:

"I am in receipt of your favor of the 22d inst., respecting the communication from this department dated November 8, 1915, to the commissioner of the sinking fund.

Through an error the communication in question contained a misconstruction of an opinion of the corporation counsel relative to the rights of private properties to improve waterfront properties.

It was my intention to withdraw it and destroy it, as to allow such a communication to remain in the files of the sinking fund may at some future time lead to mistake and serious error, and as it does not represent the views of this department on the subject and misconstrues the opinion of the corporation counsel, it is for this reason that I ask that the communication be returned to this department."

Then follows the letter dated March 23, 1916, to Mr. Smith, commissioner:

"In accordance with your request of December 27, 1915, I am returning herewith your communication of November 8, 1915, to the chairman of the commissioner of the sinking fund, as well as a copy thereof, addressed to me, under the same date, which refers to the New York Dock Company and the borough of Brooklyn."

Go ahead with yours now, Mr. Cedarstrom. A. There is a communication here, or a memorandum sent to the editor of the Brooklyn Eagle, signed by Mr. Whitney, wherein he took issue with an article that appeared under Mr. Dewar's name.

Q. What had he to do with this business? A. I understood that he was a member of the sinking fund and that he was opposed to the transaction as a whole.

Q. Mr. Dewar was chamberlain? A. Yes, sir.

Q. How did you learn that he was opposed to this business? A. From inquiry as to the conferences that were held and the article in the Eagle proves it conclusively.

Q. Well, I will quote some of this letter. It is dated December 6, 1915, written to the editor of the Brooklyn Eagle and signed by Travis H. Whitney, secretary of the Public Service Commission. He says:

"In your issue of Sunday, December 5th, you printed a letter from Honorable Henry Dewar, treating at length, but somewhat superficially, the facts with respect to the pro-

posed agreement with the New York Dock Company as to the real estate at the foot of Clark street."

This letter gives a history of the transactions and purports to be an answer to Mr. Dewar's criticism. One of the last sentences of it is this:

"Mr. Dewar criticises even the proposed price for the easement of Clark street, stating: 'The easement binds you for the right of operating the tunnel, the roof of which is about fifty feet below mean high water.'"

The actual facts are that the Clark street tunnel will be about twenty-seven feet at the bulkhead line and less than fifty feet at the pierhead line at low-water mark.

In other words, the tunnel is so near the surface that it will make impossible any further slips over."

I read that simply to show that the answer of Mr. Whitney traverses the published article of Mr. Dewar with considerable care. A. The next letter on file here from the department of finance, December 22, 1915, addressed to the Public Service Commission and signed by Alexander Brough, deputy and acting comptroller, wherein he says:

"There has been referred to me for consideration, your communication of the 14th inst., addressed to the commissioners of the sinking fund, with reference to the New York Dock Company proposition, stating that your communication dated November 3, 1915, transmitting for consideration of the commissioners of the sinking fund the matter of the sale of property at the foot of Joralemon and Montague street, be withdrawn.

In reply thereto, I desire to say that at a meeting of the sinking fund held November 18, 1915, Mr. Halm, president of the New York Dock Company, personally withdrew the proposition of his company and the secretary was thereupon instructed to notify the Public Service Commission of this action.

It was unnecessary for the sinking fund to take any further steps in this matter and your letter of the 3d will be placed on file."

Now, after that communication I had very little to do with the matter because the matter was taken up by the commissioner and the secretary of the commission and members of the city government. The final result was that there was an agreement entered into with the New York Dock Company. They paid them \$300,000 for the easement at the foot of Clark street, later constructed a pier over the tube and received from the city \$12,500 for the property at the foot of Montague and Joralemon streets, and turned over to the department of docks and transit funds credited with that amount of money.

Q. Well, you consider that the city distinctly is the worse off by this second form of the proposition? A. I think the dock company is the considerable gainer by the transaction, as the ultimate outcome was, but I think, at the same time, that the dock company could recover probably two or three hundred thousand more than they received by making this agreement. That was as Mr. Halm stated in his letter, that he wanted to conserve his property and use it as one unit.

Q. Did you observe that any particular person among public officials was at the front in bringing up the new transaction? A. Why, only that after my talk with Mr. Hotchkiss here about somebody wanting to butt into the deal, there were representatives of the municipal reserve came over to look into this matter, and they stated that they wanted to make a report to the mayor and also to Mr. Dewar on it, and I gave them access to all the information I had, and Mr. Adamson, he came over, and I kept copies of all our agreements and reports and everything of that kind. I never heard anything more from them, and from the article there of Mr. Dewar I took it that he was the primary mover against this proposition.

Q. You considered that all the developments was the primary mover against the proposition? A. Yes, and I also had an idea that he didn't have a proper knowledge of the facts.

Q. You read Mr. Dewar's article in the "Eagle," didn't you? A. I did.

Q. And did you consider that the article did not show a knowledge of the facts of the case? A. I think I called the secretary's attention to it and he wrote that reply.

Q. Mr. Dewar was connected with the bureau of reserve, wasn't he? A. Formerly; I don't know whether he is now or not.

Q. Who of the bureau of municipal reserve called upon you? A. Mr. Adamson.

Mr. ————. Mr. Adamson is not connected with the bureau of municipal reserve.

A. I guess that is correct.

Q. Now, is there anything I have failed to ask you, anything I have failed to bring out? I will address the same question to you, Mr. Harkness.

A. (By Mr. Harkness).—I think you have been very thorough, Mr. Moss.

Q. (By Mr. Schuster).—Mr. Cedarstrom, this matter was under consideration before the finance committee for several weeks?

A. Oh, I think for months.

Q. And does the finance committee have a real estate expert? A. Yes, sir.

Q. And did the expert, in regard to this matter, make any formal report? A. I know that there was a report written and that he had approved it, because I went over the report with him.

Q. (By Mr. Moss).—Was that report signed by Mr. O'Malley?

A. No, drawn up by Mr. O'Malley.

Q. (By Mr. Schuster).—He concurred in your view?

A. Yes, sir. In every point.

Q. Have you a copy of his report? A. Yes, I have. I may say that is a sort of confidential communication that we exchanged for record.

Q. (By Mr. Moss).—Well, if this is a confidential communication from the Comptroller's office, we will call upon the Comptroller for the original. It is dated November 15, 1915, on the letter head of the Comptroller, with the initials CAO'M, which, I believe, is Charles A. O'Malley.

A. I will leave that copy with you.

Q. Thank you.

Senator Lawson.—Is there anything further with Mr. Cedarstrom?

Mr. Moss.—No. Do you want to have him remain in the room?

Senator Lawson.—Yes, I think he had better.

Cedarstrom leaves stand.

MR. FRANCIS DE C. SULLIVAN was called as a witness and, having been duly sworn, testified as follows:

Q. (By Mr. Moss).—Mr. Sullivan, how long have you been a director of the Interborough Railway Company?

A. My recollection is since some time in 1910; it might have been earlier than that; I have not looked it up.

Q. Well, do you remember the two propositions that your company submitted in 1910 for building subways? A. In a general way, yes. Not specifically, but in a general way.

Q. The first of those was March 10, 1909, if I have got the date right, and your company asked for permission to build the Lexington avenue and Seventh avenue extension lengths and subway platforms and third track the elevated lines at your own expense, and that was declined because it proposed a fifty-year operating lease with twenty-five-year renewals and because the third-tracking was wanted on a perpetual franchise. That in general agrees with my recollection.

Q. Then on June 30th your company again applied for permission to make the extensions at its own cost on condition of certain elevated railway privileges and the purchase by the city of the Steinway tunnel, and these propositions were to be done by your own money. A. That is my recollection of that.

Q. In September, 1909, there was an additional proposition which suggested the Madison avenue route instead of Lexington avenue route. A. Yes, sir.

Q. Do you remember any negotiations in the early part of 1910 which were conducted by persons representing your railroad company and the Public Service Commission? A. In a general way I remember that negotiations were going along at about that period, Mr. Moss.

Q. Mr. Landstreet, will you step forward please?

A. (By Mr. Landstreet).—Yes, sir.

MR. LANDSTREET is sworn by Senator Lawson, and testified as follows:

Q. (By Mr. Moss).—Mr. Landstreet, I haven't got your first name.

A. Fairfax.

Q. You are chairman of the board of directors of the New York Dock Company, are you not? A. Yes.

Q. Now, we have been taking some testimony to-day, Mr. Landstreet, about the negotiations that your company had with the Public Service Commission regarding the proposed work in connection with the subway at Clark street in Brooklyn and we have had testimony from Mr. Cedarstrom and Mr. Harkness, and the Public Service Commission, and Mr. Hotchkiss, the counsel. Mr. Harkness testified that he had been informed that at one time you saw the Mayor, Mr. Mitchel, with regard to some one who had intervened in those transactions at the time they were pending before the sinking fund commission. Did you see the mayor? A. No, sir.

Q. Did you mention any name to the mayor personally? A. No, sir.

Q. Did you mention anyone to any person connected with the administration, suggesting employment as counsel? A. No.

Q. What information did you have of the person who intervened, or suggested the employment of additional counsel? A. I had never heard that anyone suggested that they be employed.

Q. Not necessarily that anyone suggested themselves, but what person first suggested it? A. There was never any suggestion made to me about it.

Q. No, I don't say there was but there was information came to you; what was that information? A. Are you referring to the negotiations for the Clark street subway?

Q. Yes, sir. A. I didn't see the mayor at all in connection with the negotiation for the Clark street property.

Q. What information did you have with regard to some one's being employed or desiring to be employed or suggesting that someone be employed as additional counsel; what information did you have on that? A. Well, I understood—I am not prepared to say where I got it or who told me, or anything of a



very definite character, but the information was given me that Senator Reynolds had suggested that he might be used in the matter.

Q. Who gave you that information? A. I don't know.

Q. Who did you talk with about it? A. I don't recollect of ever talking with anyone about it. I don't recall talking with anyone about it.

Q. Now, this morning Mr. Hotchkiss said that the figure was \$50,000. Did you hear any such information yourself? A. No, sir.

Q. Did you ever hear of \$50,000 in connection with that? A. No, I never did.

Q. What sum of money did you hear? A. I didn't hear any particular sum.

Q. Well, now, you did hear that Senator Reynolds was mentioned. Please tell me in what way he was mentioned. A. The information came to me that Senator Reynolds had suggested that he could be of use in carrying through, or hurrying through the proposition we had up with the city.

Q. It was stuck fast, as it were, in the sinking fund. A. Well, I don't know where it was stuck; it was stuck several times. I don't know what particular sticking point it was.

Q. Well, was the fact that someone was intervening in the way that you have mentioned communicated to any city official? A. Communicated what?

Q. To any city officials? A. I don't know.

Q. What is your information about that? A. Well, I haven't any information about it.

Q. Well, you didn't sit still and say nothing and do nothing. A. Well, I naturally should have done something.

Q. Did you? A. Well, I did.

Q. What about your associates. Did they convey information? A. I really don't know whether they did or not.

Q. Have any of them told you? A. No.

Q. It has been testified by Mr. Harkness, of the Public Service Commission, that he and Mr. Whitney, secretary of the Commission, and Judge McCall, president, at that time, took the matter up and met Mr. Hotchkiss and some other persons, Mr.

Halm, I think, and endeavored to get the assistance of the New York Dock Company in uncovering an individual that was supposed to have made the proposition. Did you know about that?

A. No, I did not.

Q. Never heard of it? A. No.

Q. Now, make your statement. A. The only statement I wanted to make was the conduct of the negotiations of the city on the Clark street tunnel were taken up after I had retired from active service with the dock company. It was only in a general way that that subject got to me and I really know nothing about the negotiations, except so far as being present at the board meeting. I was only in the negotiations, I think twice, first in the early stages of the negotiations, second in arriving at what we had supposed as an agreement before the Public Service Commission, and third when negotiations were apparently broken off. I visited the dock commissioner for the purpose of seeing if they couldn't be reopened.

Outside of those three times, my attention was taken up with other things and I really didn't pay any attention to it.

Q. What did the dock commissioner say to you when you spoke to him? A. When I saw the dock commissioner and found what the differences were between himself and the president of the company, I agreed with the dock commissioner to recommend to the president of the company a modification of his demand and at the same time got the dock commissioner to agree to slight modifications in his. There was no other discussion on any feature except the questions that were to be disposed of in this way.

Q. Was there anything said in your conversation with the dock commissioner about that approach? A. I could not say that I did or did not. My impression is that there was nothing said except on the bare facts of the differences between the dock company and the dock department.

Q. Did you have a conference with the mayor on any branch of the subject? A. No.

Q. Never talked with him at all? A. No.

Q. Did you ever see Mr. Dewar? A. I don't know him when I see him.

Q. Is Mr. Smith the only member of the city government that you have any recollection of talking with? A. On this particular matter?

Q. I mean about the Clark street subway, and anything whatever. A. I appeared before the Public Service Commission once I know of, probably two or three times, during the negotiations. I can't recall just when. I know Mr. Cedarstrom was there, Mr. Strauss was there at the last conference I had with them.

Q. Can you give us any information whatever showing how the name of Senator William H. Reynolds got into your mind in connection with this matter? A. Somebody suggested to me that Senator Reynolds said that he could be of a good deal of use to us and the dock company in clearing this thing up.

Q. Now, who told you that he had made that suggestion? A. I couldn't now tell you to save my life.

Q. Was it one of your lawyers? A. I can't say positively.

Q. Do you think it was one of your lawyers? A. I can't say that I think so.

Q. Do you think it was Mr. Auerbach? A. I don't know that it was Mr. Auerbach any more than I would say it was the president of the company; I could not locate him now to save my life.

Senator Lawson.—Did you ever talk with Mr. Harris, the deputy dock commissioner, about that matter?

A. I don't think I have ever talked to Mr. Harris. I don't know that I have seen him to talk to him.

Q. You know him though? A. Yes, I know him very well.

Q. And Commissioner Smith was the only man you really took up the subject with outside of the Public Service Commission? A. Except in appearing before the Public Service Commission, Commissioner Smith was the only man that I discussed this question with.

Q. Do you know Senator Reynolds when you see him? A. No, I have seen him but I don't know that I would recall him now. I have never met him.

Q. (By Mr. Moss).—Now, I don't want you to think, Mr. Landstreet, that I am doubting you, but my experience with witnesses is that sometimes they forget. I forget myself. And

when we get to talking about a thing, our recollection comes back. Now, I want you to think carefully and see if you have any doubt on the question of whether you ever talked with the mayor about this phase of this subway business.

A. I talked with the mayor a good many times.

Q. I suppose you have? A. I have joked the mayor a good many times.

Q. You might easily have forgotten this if you have not thought carefully about it. Now I ask the question in view largely of the statement made by Mr. Harkness this morning, giving privately some of his reasons for making this statement. It was to the effect that you had told the mayor something about this approach that had been made and even that you had mentioned the name that you had mentioned here, that you had mentioned that name to the mayor. A. I joked him there one time.

Q. Now, you joked with him? A. I am perfectly clear that I never called on the mayor officially in connection with this subway building. I have not been in his office for a good long while.

Q. I don't care about officially. All I want is the facts. Did you mention the name of Mr. Reynolds to the mayor? A. I have no recollection whatever of doing it.

Q. Do you think you did not? A. I am very sure I did not.

Q. Well, that is an answer. I want to answer Mr. Halm right here now. Have you heard the name of Mr. Reynolds in connection with this business? A. Yes.

Q. Who told you? A. I don't know.

Q. When did you hear it? A. Within the last month or so.

Q. Under what circumstances? A. I don't know that.

Q. What did you do about it? A. Nothing.

Q. How was his name mentioned? A. I think it was in some way connected with his public affairs, the handling of his property in South Brooklyn that he expected the city to overlook and in connection with the general scheme of getting into the thing and affecting South Brooklyn, the Marginal Railway, etc.

Q. That was the property of the Furst Construction Company, wasn't it? A. I believe so, yes.

Q. Well, is some of that property to be taken as a concentration yard for some of the terminal lines? A. I believe it is.

Q. That is the terminal that connects your property and the Bush property? A. Yes.

Q. To connect your New York dock yards with the Bush yards? A. Yes.

Q. The closing of this Clark street matter is only of recent date, isn't it? Your Clark street matter, I mean. A. The Clark street matter was settled with the Public Service Commission as long ago as December; then that left the Montague and Joralemon streets open and that was passed upon by the sinking fund committee about a month ago.

Q. Well, did you ever employ Mr. Reynolds? A. No, sir.

Q. In any shape, directly or indirectly? A. No, sir.

Q. I want to ask Mr. Hotchkiss, did you hear the name of Mr. Reynolds in connection with this business? A. I heard it to-day for the first time.

Q. Not in any way? A. No, sir.

Mr. Smith.—Mr. Landstreet, were you in possession of the name of William H. Reynolds in this connection at the time you visited Dock Commissioner Smith for the purpose of reopening the negotiations? A. I can't recall now whether it was prior to my visit to Dock Commissioner Smith or afterwards.

Senator Lawson.—Well, can you approximate, Mr. Landstreet, when Senator Reynold's name was mentioned to you? Last year? Approximately the month?

A. Well, in February or March of this year.

Q. Oh, no, last year. July or August or September. A. It is pretty hard for me to do that, to attempt to approximate the time.

Q. You were here when Mr. Cedarstrom mentioned the date of a letter of November 8, or somewhere in that neighborhood, 1915. A. I haven't heard anything.

Q. (By Mr. Smith).—Do you remember whether it was within or without the personnel of the dock company that you received this information in regard to Mr. Reynolds?

A. I know that I did not get the information from any city official.

Q. That doesn't go quite far enough, and doesn't go quite near enough for the answer. Do you now remember whether it

was within or without the personnel of the dock company that you got your information? A. Oh, the personnel of the Dock Company? I understood you to say the dock department.

Q. No, the dock company A. No, I could not say.

Q. Your first answer and your comment brings up another question. Do you remember whether it was within or without the personnel of the dock department? A. I know it was without the personnel of anybody in the dock department.

Q. And you can't say whether or not it was within the company. A. No, I could not say that.

Senator Lawson.—Well, was it any member of your counsel's firm or any attorney that had been retained by your company?

A. If I could locate just who the individual was who made the remark to me I would tell you in a moment. I paid so little attention to the fact.

Q. Did you meet this individual in an official capacity or just incidentally? A. I couldn't tell you that.

Q. (By Mr. Smith).—Did you pay enough attention to it to comment on it or report it or repeat it to anybody at any time?

A. If I did repeat it, it was not done in a very serious way. I think it is more natural that I have mentioned the subject to some of our company but I doubt if I used the name when I mentioned it.

Q. What members of your company did you repeat the fact to without mentioning the name, even in the most casual manner? A. Well, I don't know that I did, but the chances are that I may have done so. If we were discussing matters in a board meeting, I would very probably mention the subject but I don't think I would mention the name.

Q. Have you any recollection of even the most casual reference in a board meeting to this proposition? A. No, I have not.

Q. (By Mr. Schuster).—Did you mention it to the counsel of the company?

A. I have no recollection of mentioning it to the lawyers of the company.

Q. (By Mr. Smith).—Have you any recollection of making even the most casual reference to it outside of the company and the counsel on any occasion?

A. I have no recollection now. I certainly made no reference to the name.

Q. You have no present recollection of having discussed or mentioned the subject outside? A. No.

Q. (By Senator Lawson).—Any further questions, Mr. Moss?

Mr. Moss.—Yes. Wasn't Mr. Mitchel chairman of the sub-committee that had charge particularly of this matter?

A. That I really don't know; I had nothing to do with the matter at first.

Q. Then I will ask the same question with regard to terminal railroad. A. The terminal railroad? I had a good many negotiations with Mr. Mitchel in connection with that.

Q. He was chairman of the committee? A. Yes, that is my recollection.

Q. Now, weren't you told that Senator William H. Reynolds desired to be, or was suggested as a man who could help in this matter. Weren't you told that by some one connected with or associated with you in the dock company matters in order that you might make a statement of it to the mayor? A. No, I don't think so.

Q. Wasn't it desired to place the facts before the mayor so that he might do what was right and so that your company might be relieved from such an approach? A. I should have been the last man to suggest mentioning the subject to the mayor.

Q. Why not? A. What good would it do?

Q. All the good in the world. If you were dealing with the city with regard to this important franchise, calling it that, and the matter has been blockaded so that you had to withdraw it, why wouldn't you say to the mayor, above all others, that such a suggestion had been made? You were informed that Senator Reynolds had made, himself, such a proposition, why wouldn't you state that? A. Well, I have never had a matter up with the city, Mr. Moss, where there has been a suggestion made to me of forty different methods and probably forty different people that might help the situation, but as for taking them up for practical propositions and appealing to the mayor or city officials, that never occurred to me.

Q. I didn't inject that idea; you surprised me by saying it

was a last thing you would do. Now, why is it the last thing you would do, to mention it to the mayor? A. If I thought, or knew, a demand or threat had been made and the man was capable of carrying out his threat and I felt satisfied that he was delaying the situation, then I should not hesitate.

Q. But you had practical proof that your proposition was delayed and you were more or less troubled about it A. Well, it was not the first one delayed.

Q. No, but it so happened that the mayor was chairman of the sinking fund commission. Now, understand me as making no suggestion or intimation whatever, directly or indirectly as for any reason that you should go to the mayor, but why do you say it would be a last thing you would do. I think you ought to clear that expression up. A. I don't see anything to clear up there. What was the necessity of my going to the mayor about a thing I don't take seriously? I am making a charge there that would only bring up a lot of talk and bad feeling and precipitate a lot of bad feeling with a lot of people.

Senator Lawson.—You say you joked the mayor. Did you joke him about this proposition?

A. I have no recollection of joking him about this matter.

Q. (By Mr. Moss).—Didn't you think you might be doing a service to the mayor by telling him at once if there was such a thing being talked around?

A. Well, I thought there was enough had been talked about that for the mayor to know that.

Q. What do you mean "there had been enough of that published around to make it clear to the mayor without your informing him"? A. Well, I thought it was generally understood, the relation between the mayor and Senator Reynolds; it was always of a very friendly character, and I understood at the time of the campaign Senator Reynolds had taken an active interest in the mayor's campaign and had got through some act in connection with the mayor on some trip. I connected Senator Reynolds' name with Mayor Mitchel's name. I have had forty men suggest it to me to loosen this thing up in the Public Service Commission or the sinking fund commission. I think every newspaper in town said they could do it.



Q. Didn't it occur to you that when a matter of that kind was discussed that you would be doing a service to the chairman of the sinking fund commission to let him know about it? A. No.

Q. Well, that is a fair answer. I have no further questions to ask, Mr. Chairman.

Mr. Schuster.—Did you consider the suggestion a proper one at the time you received it?

A. I did not take it very seriously, but I had had so many similar ones——

Mr. Moss.—You knew, Mr. Landstreet, you had a way out, if you were forced to it?

A. The proceedings there were taken up by our people rather against my advice. My position, when it was turned over to them, was that they would never get anything over without condemnation.

Q. Well, you had nothing to lose or give up for. A. Well, a lot of time.

Q. Yes, a lot of time; and time is money, that is a fact.

Mr. Landstreet and Mr. Hotchkiss are excused and the Committee continues with the testimony of MR. SULLIVAN.

Mr. Moss.—Senator Lawson, I think it should appear upon the record, in connection with this matter that we have just inquired into, that the condemnation commission never had anything to do. It practically died a natural death.

Mr. Smith.—A premature death.

Mr. Moss.—Well, that is natural.

Senator Lawson.—We might place on the record, Mr. Moss, that at a hearing of this Committee at a Bar Association last spring, Dock Commissioner Smith made the statement that the Public Service Commission were taking away valuable dock privileges without consultation or conference with him, and as a result of that statement, made before this Committee, Mr. Smith and Commissioner Hayward were put in close connection and taken over to that property and viewed it physically, and thereafter all these negotiations began, which resulted in the condemnation com-

mission never taking an action, and which was consummated by the city and the Public Service Commission in this particular agreement.

Mr. Moss.—Yes, I wanted particularly to have that upon the record because the witness referred to you as the chairman of that proposed commission. Now, Mr. Sullivan, there has been put in evidence here a letter of Mr. Shonts as president of your company to J. P. Morgan & Company, dated March 10, 1910, outlining the proposition which was pending at that time and which was a proposition to make all of the improvements and extensions then contemplated with money to be raised by the Interborough Railroad Company. Do you remember that?

A. In a general way I do, yes.

Q. That was a matter that was considered seriously and discussed on the board of directors? A. Yes.

Q. Were you then on the executive committee? A. I think that I was at that time.

Q. Now, it appears from evidence that we have had that on March 22d there was a meeting at the house of Commissioner Wilcox, of the Public Service Commission, at which Mr. Shonts and Mr. Rogers of your company were present, and Mr. Harkness and others of the Public Service Commission were present, and that there was a tentative agreement reached that night, which matter was submitted to the board of directors the next morning, March 23, 1910, submitted by Mr. Shonts as a matter substantially arrived at, and at that meeting the whole matter was referred to the executive committee with power; do you recall that? A. Yes, in a general way I do, Mr. Moss. Those things were brought in and referred to the executive committee during the time of negotiations, but there were so many of them and it is such a long period of time, and if I was present at that executive committee I was fully apprised of such procedure.

Q. Now, it went along, this meeting on March 23d, authorized the executive committee to do anything and everything in the matter of submitting a proposition, and twice, March 25th and March 28th, the proposal was modified, but it still retained the provisions by which the company was to raise its own money. It so remained when Mr. Shonts and Mr. Wilcox met at Mayor

Gaynor's office, and when Mr. Shonts reported to your board that the mayor had suggested that he was willing to arbitrate between your company and the Public Service Commission; do you remember such a suggestion? A. Well, I probably heard it, Mr. Moss.

Q. Well, it is not untrue; it is in your mind? A. Yes, generally.

Q. Then it appears that in the same month, in April, Mr. Shonts visited the mayor at St. James and had a talk with him, and so it remained until July 5th, when Mr. Shonts, for your company, addressed a letter to the mayor modifying the proposition and for the first time putting in the proposal that the company and the city should supply the money together. Do you remember the occasion when that change was made? A. I do remember that, Mr. Moss. The prior arrangements were practically that the Interborough should have the fee as far as subways were concerned. After that the Triborough system came up.

Q. Pardon me, the Triborough system was not really to the front on July 5, 1910, when the first time your company proposed that the city money should be used in making the extensions to your system. A. Well, there must have been some reason for it at that time.

Q. That is just what I am getting to, Mr. Sullivan, and it was on that line that I wanted to recall your memory and get the facts as you recall them. There was a distinct departure from the original position of the company. Your company had gone so far as to have these negotiations culminating in the meeting at Commissioner Wilcox's house and the general understanding that you had reached an agreement, followed by the meeting of the board of directors, then the board of directors, instead of proceeding upon the proposition that had been all formulated, turned the matter over to the executive committee, and in the course of a few months, out of that executive committee came the new proposal which involved the use of city money. Now, it is just to see what influences were at work, what considerations there were, that made that radical change in the offer of your company. Do you remember Mr. Shonts reporting to the board of directors that he had reached practically an agreement at the house of Commissioner Wilcox the night before? A. I have a general recollection that Mr. Shonts made a report of that meeting.

Q. That he had practically reached an agreement there? A. But I also recollect in a general way that there were other conditions from time to time. You see that agreement was not entered into at all. It was not accepted by Mr. Wilcox or by the Public Service Commission. We were prepared at that time to enter into that agreement. Now, from time to time, during those negotiations, conditions changed and there were other conditions suggested to be put in the agreement or the contract. Now, I don't know when we modified the terms of the contract, the length of the term.

Q. But, Mr. Sullivan, all that came afterwards. To show how complete was the understanding in March, 1910, at the time that Mr. Shonts reported the matter to your board, I will quote from Mr. Wilcox's letter to the mayor, dated July 7th. He says:

"In the negotiations for the construction and operation of these lines, the following terms and conditions ultimately came to be considered as the proper basis for an agreement:

(a) The cost of constructing and equipping to be borne by the Interborough without the use of the city's credit.

(b) The ownership and title of all lines to be in the city.

(c) The Interborough Company to surrender its rights under existing contracts for the present subway to renewal and all liens to fall into the possession of the city upon a certain date not more than fifty years hence.

(d) The city to have the right to terminate the contract for the operation at any time after the expiration of ten years upon making certain payments.

(e) All net profits arising from the operation of the above lines to be divided equally between the city and the company.

(f) The company to operate any additional lines which may be constructed by the city as extensions, provided the operation shall not diminish the company's profits from its then existing system."

He says those were the terms that came to be ultimately considered as the basis for an agreement. As you know, these negotiations were very nearly brought to a successful conclusion

but at the last moment the directors of the Interborough Company objected to the proposed terms. We have understood that the terms were satisfactory as to the interests of the Interborough Company, as they expected to finance these operations and that such interests have not changed their position. Now, what I want to emphasize is the sentence, "But at the last moment the directors of the Interborough objected to the terms." A. Naturally, probably, there was a talk when we had a proposed contract that it would be a contract after we had time to thoroughly consider it, that we would be entering into a contract whereby it would leave the city rights open entirely. We might have municipal operation against us, other companies against us and as representing stockholders in that company, we couldn't vote for something—the contract had not been accepted by the city and we had a perfect right, representing the stockholders, to withdraw our offer.

Q. But you gentlemen knew that Mr. Shonts, on your behalf, was negotiating with the Public Service Commission and you knew what these letters were, that you had even gone so far as to send to your financial backer, Mr. Morgan. They were there in the file. One copy had been delivered informally to the Public Service Commission. You didn't do all that without consideration. A. No, we had considered that.

Q. And so far had you considered it that with no other proposition in sight you practically abdicated the powers of the board and gave them to the executive committee, allowing the executive committee the power to make any terms they pleased? A. The reason for that was it was easier to get the executive committee together than a full board.

Q. To be sure, but there must have been a pretty complete understanding between the board and the executive committee at the time that you gave it full power. You must have decided on a program. A. We did, in all probability, at that time, but there must have been something else came up afterwards which showed we had made a mistake. The executive committee had power and it didn't feel that it should carry out that contract.

Q. But it is very plain that on that morning, on the 23d of March, after the historic meeting at Commissioner Wilcox's

house lasting until 2 o'clock in the morning from the previous night, there must have been something arranged, understood and agreed upon, so that all those members of the board felt safe in conferring that great power upon the executive committee because it could meet more promptly. A. My recollection, Mr. Moss, we never felt absolutely safe in that proposition where we were to put up all the money. We were dealing and we thought we should have the extensions and we were at that time — we thought that the very best we could do under the circumstances — I don't think we ever felt absolutely safe.

Q. Well, didn't you feel that the sudden proposal that the city would have to divide the expense with you might drive the city away from you and didn't you feel that a sudden proposition that the city would have to furnish half the money would drive the city away from you and force it to open up its Triborough proposition? A. Well, we felt we were better off than to dig up new propositions.

Q. Yes, but you had carefully considered the matter and cast it and recast it until it had its form in these letters that I have referred to. A. We were trying to arrive at an agreement which we felt that we were justified in entering into.

Q. Wasn't there a conversation in that meeting of the board of directors on the morning of March 23d, substantially to the effect that it wasn't necessary for the company to raise all that money on its own part but that some other arrangements could be put over? A. Not to my recollection.

Q. Will you say there was not some such conversation as that? A. Not to my recollection.

Q. Who took the leading part in that conversation? A. Mr. Shonts, in all probability.

Q. Did Mr. Berwind take the leading part in it? A. I don't recall.

Q. He generally did, didn't he? A. The leading part?

Q. A leading part. A. Yes, and Mr. Freedman, another.

Q. Were there any persons in that board of directors who were more active than Berwind and Freedman? A. Everybody had their say.

Q. But those gentlemen were looked upon as having more experience and more ability? A. They were both successful men.

Q. Very, and each of them had experience along important lines, to be considered when you are getting franchises from the city. A. Well, Mr. Berwind had not been in it originally, Mr. Belmont was in the original negotiations.

Q. Did he take a leading part in this, too? A. I don't know about this particular meeting; he did usually.

Q. Mr. Berwind had had large experience in a corporation — Pennsylvania Railroad — dealing with cities.

Mr. Freedman had a large practical experience, political and otherwise, in the city of New York, which you were operating, and working. Didn't you rely largely upon those two men? A. I think we listened very intently to all they had to say, but I don't think there was any question that was ever decided in that board that every man did not speak his mind out at any particular time.

Q. Now, how about Hawley? Did he take an active part? A. More or less; he was consulted quite a good deal. He was considered a very able man, too.

Q. Did Mr. Freedman make the suggestion on the morning of March 23d that it was not necessary for the company to raise its own funds, that some other plan could be arranged — worked out? A. I have no recollection of it.

Q. Well, if there was, in the mind and in the intent of any of your fellow directors some way of getting the favor of the city authorities to a plan which did not require you to raise so much money, you mean you didn't hear of it? A. I didn't hear of it at that particular time.

Q. You mean the new plan — the way to get the favor of the city? A. No favor that I know of.

Q. Did you think that all of the city officials were favorable to your company? A. No.

Q. Who did you think were opposed to it? A. I didn't know that any one was opposed to it. I knew it was between the Public Service Commission and the board of estimate, and we were negotiating all the time.

Q. Didn't you know there were members of the board of estimate who were violently opposed to your corporation? A. I did not, to our corporation, but to the scheme in general.

Q. Wasn't the mayor — Mayor Gaynor — opposed to the proposition? A. I don't think so.

Q. Did you ever read his article "Looting New York"? A. Well, I don't think he was opposed to our corporation, only in so far as it is a monopoly, you might say.

Q. Didn't he oppose your corporation upon the grounds of its monopoly, upon the grounds of its connection with the street railroad interests, which were over capitalized and were eating out the life of the people of New York? I am using almost his own language. A. I think that that was general talk by Mayor Mitchel.

Q. I am not speaking of Mayor Mitchel; I am speaking of Mayor Gaynor. Didn't you know that Mayor Gaynor had written the article "Looting New York"? A. I did not read it.

Q. Did you ever read of his attacks upon your board of directors? A. I didn't read it.

Q. Did you ever hear of it? A. Well, I have heard of it.

Q. You knew of it, as a director of those large interests that you had to take care of, that the mayor had violently opposed your company, your directors, your association, practically called you robbers in the city of New York? A. We have been called robbers by a good many people.

Q. I am not speaking about a good many people; I am speaking about a member of the board of estimate and apportionment of the city. Didn't you know he had taken that position? A. Well, at the time feeling was very high. I don't recall that any one particular man —

Q. As a director, do you remember in 1909 the mayor reiterated his position in his speeches, the position I have referred to, that the comptroller did the same thing, and that to an extent the president of the board of aldermen did the same thing? A. Those are all matters of record, I will have to admit, Mr. Moss.

Q. In the report of Prendergast and Mitchel, comptroller and president of the board of aldermen, in their report, down as late as 1911, didn't you know they assailed your company and the personnel of your company, the members of the board? A. Yes, in a general way I do know it. But I don't think it was anything more than just talk.



Q. Didn't you consider —— A. They were trading, you know.

Q. Yes, trading, but they had been through an election in 1909, they had made their speeches, taken their position which was antagonistic to your company and antagonistic to your proposition, that your company should be allowed to run the new subways. Did you feel in March, 1910, and in July, 1910, that your company had won the friendship of these men who had expressed their antagonism to you? A. What do you mean by winning the friendship of these men?

Q. So that they would listen kindly to a proposition that the city would pay half the expense. A. I never thought there was anything other than that negotiations had reached a point where they could be of mutual advantage.

Q. Did you think that in March, 1910, the negotiations had reached a point where these men, who had denounced you, no longer had any spirit of denunciation in them? A. I didn't take it on personal grounds of denunciation at all; I took it on business grounds entirely. We had then reached the point that we could trade.

Q. Exactly, that is a business proposition. If you were trying to put through a contract in your private business, if you were trying to put through a contract that you really wanted to put through and the man that you are dealing with had denounced you as unworthy of confidence, and a potential robber, something of that kind, would you feel that you could trade with him until you had gotten that out of his heart? A. I have seen instances where it has been done.

Q. But you have got to get it out of his heart, haven't you? A. You have got to win his confidence that you are putting up something that is fair.

Q. Exactly. Now, had you gentlemen won the confidence —— A. Evidently.

Q. How had you done it? A. I really don't know other than through negotiations, getting to terms.

Q. How had you won the confidence of the mayor, who had pledged himself not to allow your company to build subways? How had you got his confidence by the 5th of July, so that you

dared make a proposition for the first time that the city should spend half the money? How had you won it? A. Why, we had doubtless won it through negotiating and putting up a business agreement that we would enter into and he had probably seen that he was wrong.

Q. How did you dare, way back in March, 1910, to change front, turn your back upon a proposition which was practically settled and swing over to the preparation of a proposition calling for the city to spend half the money? A. Why, I think we felt at that time we could not afford to go on, Mr. Moss. We had looked into the matter very thoroughly.

Q. But your president had reported that in a meeting that he had with the mayor in the city hall, the mayor had so far abandoned his attitude of antagonism that he was willing to fight your battles with the Public Service Commission. You will remember when that report was made. A. I don't recall the incident.

Q. But Mr. Shonts reported so carefully that his report was written and copied into your minute book and it stated that the mayor had offered to be an arbitrator between your company and the Public Service Commission. In other words, instead of being the man who achieved office upon a platform which he wrote himself, of hostility to your company and to your plans, he was now willing to become your arbitrator. What report did Mr. Shonts make as to the way he had succeeded in turning the mayor over? A. I don't recall definitely.

Q. Did you ask him? A. He doubtless explained at that particular time what any negotiations had been.

Q. What did he explain? A. Merely on the general business terms.

Q. He certainly didn't overcome the mayor's violent antipathy by ordinary business methods. A. He might naturally have done so, Mr. Moss. The mayor wouldn't have been the only man who changed his mind.

Q. But so long as Mr. Shonts reported that he had overcome the mayor's objections, you didn't press him for any of his methods or any of the arguments or any of the reasons? A. We had perfect confidence in Mr. Shonts.

Q. Yes. Now, was one of the reasons why later on you voted him an honorarium of \$150,000. A. We did that because he had done years of extra service.

Q. Well, that was part of his extra service; he had changed over the mayor of Manhattan. A. We might have voted him extra service —

Q. Well, you might have, but wasn't it because he had changed the position of these men? A. I don't know.

Q. They had the votes, didn't they? A. At the same time they may have been at the point where they could not put through something.

Q. But you voted him \$150,000, not only for extra service but for successful service and the successful service included the changing of the minds of hostile city officials. A. The successful service included the making of an agreement —

Q. That was incidental. That agreement was made because it changed the minds of officials who were antagonistic. A. No, I don't agree with you at all.

Q. Didn't he change the minds? A. He might.

Q. If he didn't, who did? A. Why, the whole negotiations may have changed their minds; there were many more things than the Mayor's interview with Mr. Shonts. We were negotiating with the Public Service Commission and the board of estimate and everybody. We showed them the rights and wrongs in the case.

Q. Did you feel that you were very liberal with Mr. Shonts? A. No, I wanted to give him \$250,000.

Q. Out of whose pocket? A. I don't know out of whose pocket.

Q. Out of whose pocket? A. Why, representing the second largest individual owner, I would have been glad to take it out of his pocket.

Q. Was it going to come out of your pocket? A. I don't know.

Q. Well, think. Is it going to come out of the city's pocket? A. In what way?

Q. The \$150,000 has got to come — didn't that \$150,000 enter into the prior determination? A. The \$150,000 was voted to Mr. Shonts for his extra services.

Q. It went to the costs of the railroad? A. The company voted it to Mr. Shonts.

Q. And it was apportioned to the cost of construction? A. Has it been?

Q. I asked you? A. Not that I know of.

Q. Have you read the testimony here? A. Some of it. I do not know where it was, but, Mr. Moss, I will say that as a director of the company and representing the stockholders in that company, I voted that money for Mr. Shonts.

Q. And you knew very well it was going to be charged up to the construction, didn't you? A. Naturally it would be a part of construction.

Q. Certainly, and you knew it.

Mr. Schuster.—Mr. Sullivan, don't you know that that very question was discussed and mentioned at the time it was allowed? A. That it was to be put in the contract?

Mr. Schuster.—Yes?

A. There was something said in regard to prior condemnation, yes.

Q. (By Mr. Schuster).—That was generally discussed in the meeting at which that allowance was made to Mr. Shonts and to Mr. Rogers, the other ——

A. I don't remember that it was discussed at that particular meeting; I remember that I heard it.

Q. Well, you heard it in a directors' meeting or in an executive committee meeting. A. I heard it from the officials somewhere. Does the resolution say it was part of a prior condemnation? Was it put in there, then, that that was a part of prior condemnation or wasn't that voted by the directors for extra services to Mr. Shonts, that \$150,000 you are talking about?

Senator Lawson.—The resolution speaks for itself on that; it was afterwards submitted by your counsel. A. Yes, afterwards.

Mr. Schuster.—It was discussed?

A. Oh, I have heard it talked about, yes.

Q. And prior to the granting of the extra allowance? A. That

isn't my recollection. It might have been coincident with that or it might have been around about the same time, but I don't recall that it was prior to it.

Q. Would you say that it was not prior? A. I would not say one way or the other. I have heard it.

Q. Well, you knew it was going into the cost? A. It was part of the construction, yes.

Q. You knew it had to be passed upon by the commission? A. I take it that all our construction, as long as we were apart from the city, they had to pass upon it and such as they would allow they would allow, and such as they would not allow the company would have to bear, naturally.

Q. Did you ever see the memorandum which Mr. Rogers, your counsel, submitted to the engineer for his confirmation? A. I don't think I ever did see that.

Q. Was Mr. Rogers present at the meeting of the board of directors or the executive committee that allowed the so-called bonuses? A. They were not granted as bonuses.

Q. Well, extra compensation. A. I think that Mr. Rogers was there.

Q. The matter was pretty generally discussed, was it not? A. Why yes; the matter was very thoroughly discussed and the board was very unanimous.

Senator Lawson.—We will suspend now until to-morrow morning at 11 o'clock, and Mr. Sullivan will return at that time.

Adjourned till June 1st.

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### June 1, 1916

MUNICIPAL BUILDING, NEW YORK CITY.

Morning Session, June 1st, 1916. Meeting convened at 11 A. M.

JOSEPH S. AUERBACH was called as a witness, and having been previously sworn, testified as follows:

Q. (By Mr. Moss.) What is your full name, Mr. Auerbach?

A. Joseph S. Auerbach.

Q. Mr. Auerbach, you were a partner of Mr. Hotchkiss in the firm of Davies, Auerbach & Cornell? A. Yes, sir.

Q. You recall the transactions of the New York Dock Company with reference to the tunnel and docks at the foot of Clark Street, Brooklyn? Transactions with the Public Service Commission and with the Sinking Fund Commission? A. Just recall them, yes.

Q. Yes. A. I would like to say preliminarily, Mr. Moss, as I have said to you before I took the stand that our firm was professionally employed in the matter, aside from any question of fact, and aside from the question that the subject matter is not germane to your inquiry, and aside, also, from the fact that my view is that the Committee can't prosecute further inquiry. I will say this if you will let me volunteer it —

Q. Yes, sir. Yes, sir. A. — but I wish you to understand that that will be the extent to which I shall be willing to testify. A suggestion was made that additional counsel be secured; it was unfavorably received and the matter ended there.

Q. Was the suggestion made to you? A. Well, I said I wasn't going to answer any more questions.

Q. I want to see how far you can go. My questions may perhaps be such that you will have no hesitation in answering them. A. What are the questions you were going to ask, Mr. Moss?

Q. Well, now, that is one of them. The question was what was the suggestion for additional counsel made to you? Witness requests stenographer to read testimony given thus far.

A. I am willing to say this, now, as follows: Although I said that what I preliminarily said was the extent to which I wanted to go, if you would like to have me answer the question I will say "Yes."

Q. Who made it to you? A. No —

Q. You decline to answer? A. Yes.

Q. Who was the additional counsel that were suggested to you? A. No —

Q. You decline to answer? A. Yes.

Q. What amount of compensation was suggested? A. No.

Q. You decline to answer? A. Yes.

Q. To whom did you communicate the information that you received? A. The same answer.

Q. Decline to answer? A. Yes.

Q. Did you ever see Mayor Mitchel about this matter? A. Couldn't you ask me one question which would bring up the right of the Commission to examine me?

Q. Oh, no, we don't pay any attention to that bugaboo. A. To that?

Q. To the right of the Commission to examine you. We don't pay any attention — A. I was only going to economize your time.

Q. We don't dignify such questions as that by paying attention to them. A. I tell you the reason I ask you the question I particularly desire not to lug names into this, and I had no idea where it was going to go because I proceeded upon anonymous information. It came to me anonymously but Mr. Harkness testified that he had been informed and I didn't know he was going to testify to it that he had been informed, that someone had seen the Mayor and had mentioned a certain name to the Mayor, and had mentioned —

Q. A certain name to the Mayor — which name did not come out on the testimony of Mr. Harkness. And we asked Mr. Landstreet about that and he didn't give us any more information. Now, it is merely with the desire to trace the individual who came in to intervene there that I asked this question, and I want you to know that if you say that you mentioned some name to the Mayor, nevertheless I am going to ask you who it was. A. Well, I'd rather have the same answer applied to that question.

Q. Then you decline to answer? Well, I think, Mr. Chairman, that further procedure upon this subject might well be reserved to an executive session of the Committee, and we can have this record written out and submitted to the Committee in the executive session. A. (By witness.) Mr. Moss, I never got it before — I have tried to get testimony in regard to another matter from you — I wonder if I could get a copy of this testimony.

Q. We haven't been in the habit of doing that but we will take that all up in executive session.

Mr. Lawson.— The testimony is so brief, Mr. Auerbach, that I hardly think you'd require a transcript of it. You haven't said anything.

Mr. Moss.— Well, my inclination would be to advise the Committee to have it written out and given to Mr. Auerbach.

Mr. Auerbach.— Now, I don't care for it if it is against your practice.

Mr. Moss.— There is no rule.

Mr. Auerbach.— Well, if you are going to have a lot of requests made from other people that you don't want to respond to —

Mr. Moss.— Well, to tell the truth, we'd be busy doing nothing else.

Mr. Lawson.— Rules of a Legislative Committee, Mr. Auerbach, are not so strict. We can change our method at any time we decide to do so in executive session, as a whole in executive session. It is for the Committee to decide. If we decide to give you a transcript we will do so. We will communicate further with you at that time.

Mr. Auerbach.— If it is for Executive Committee, why it isn't worth while but I'd like to have it.

Mr. Moss.— I'd like to have my question go as far as this: Did you ever talk with the Mayor about any phase of this Dock matter? A. That was the last question.

Q. Well, that is the last question — you have considered it — and I have no disposition to follow it unnecessarily. It depends somewhat upon your answer, of course. A. Well, I just want to ask you whether, if you find out that I didn't see the Mayor, do you want to still ask further questions?

Q. Well, I don't know. A. Then I will leave the answer as it is.

Q. Then, you decline to answer? A. Yes.

Q. Allright.

Mr. Lawson.— You are excused, Mr. Auerbach.

Mr. Moss.— Mr. Sullivan.

MR. SULLIVAN takes the stand.

Mr. Auerbach. (Mr. Auerbach had left the stand and had



spoken with the witness, Hotchkiss.) Mr. Moss, if you would like to have it go on record, I would like to have that question answered — that is the last question — if you will let me say in the last answer, whether you would ask me more questions or not, I would say “No, I didn’t see the Mayor.”

Q. (By Mr. Moss.) Mr. Sullivan, are you connected with the Upper Hudson Stone Company? A. I am.

Q. Are you a Director? A. I am.

Q. I ask this question because my attention has been called to the testimony of Calvin Tompkins, at page 208 of the printed record, which shows that Mr. Tompkins was the lowest bidder for crushed stone. It was used for ballast on the Interborough. Calvin Tompkins’ bid was \$141,912.00, the Upper Hudson Stone Company’s was \$230,400 the Harverstraw Crushed Stone Company’s was \$260,850.00. It was supplied as ballast as portion A or number 3 for us in the construction of Rapid Transit Railroads. That bid was rejected upon report of the engineer to the commission — the Public Service Commission, to the effect that the stone of the Calvin Tompkins people was softer than required and was not sufficiently uniform in quality. There was a report to the Board of Estimate by the Comptroller, October 8, 1915, from which I extract this: “The crushing stress requirement of twelve thousand pounds per square inch, specified in the contract, was more than met. A Tompkins coal-limestone tested in one inch cubes having withstood a crushing stress of twenty eight thousand one hundred and twenty pounds. The Upper Hudson Stone Company’s limestone withstood a crushing stress of thirty-seven thousand and eighty. The contract was re-advertised. On the re-advertisement the specifications were changed in a number of particulars. The requirement for crushing strength was increased from twelve thousand to twenty-eight thousand pounds, per square inch. The re-advertisement made the requirement of twenty-eight thousand pounds per square inch, which is just eight hundred and eighty pounds more than the tests that had been applied to the Tompkins Company stone, or I should say, the limit which was stood by the Tompkins coal-limestone, and that was two and a half times the original requirement of twelve thousand pounds per square inch.

The bid of the Upper Hudson Stone Company on this re-advertising was reduced just two thousand dollars, and that is from two hundred and thirty thousand, four hundred and forty dollars to two hundred and twenty-eight thousand and ten dollars. I suppose, Mr. Sullivan, your Upper Hudson Valley Stone Company furnish the Stone under this contract?

Mr. Quackenbush.—Just a minute. (Mr. Quackenbush consults with Mr. Moss.)

Q. (By Mr. Moss.) Do you know upon what work this was used? A. I do not.

Q. Mr. Quackenbush says he does not believe it was used upon Interborough work as such. A. I will tell you what I know about it, Mr. Moss. When Mr. Tompkins gave that testimony, Mr. Butler Dutton was President of the Upper Hudson. He called me up the following morning and said that my name had been mentioned and told me that this was a direct proposition between the Public Service and the Upper Hudson and that in so far as the Board passing upon the Upper Hudson, they had never passed upon it.

Q. Yes. So it was directly between your Company and the Public Service? A. So I understand about it from Mr. Dutton; I knew nothing about it other than from hearsay. The President of the Company —

Q. Do you know how the engineer of the Public Service Commission came to discriminate against the Calvin Thompkins Company? A. I know nothing of it.

Q. You don't know how he came to change the advertisements? A. I never heard of it until I saw it here.

Q. Well, the fact appears in the report of the Comptroller, that the re-advertisement was just eight hundred pounds odd above Thompkins. A. Never heard of it until I heard Mr. Tompkins' testimony.

Q. I was directing your attention, when we diverted along the line of the objections which I assumed you want to know, that were being made by public officials to your Company as to its entering into the subway field — that is, the extensions of subways. I wonder if you ever knew of this letter, which I shall

read into the record. This is a letter signed by William R. Willcox on the paper of the Public Service Commission, dated June 10, 1910, addressed to the Mayor, William J. Gaynor.

"Der sir:

"Confirming our oral understanding, I have arranged for a joint conference on Friday, June 17th, at 3P. M., at this office, between the Transit Committee of the Board of Estimate and Apportionment, and a Committee of the Directors of the Brooklyn Rapid Transit Company, and the members of the Public Service Commission, to consider the general question of enlargement of the facilities of certain companies of the Brooklyn Rapid Transit System.

"I am informed that the Committee from the Board of Directors of the Company consists of Messrs. Anthony N. Brady, Walter G. Oakman and T. S. Williams.

"Did you know of this letter?

A. No, I have no recollection of it.

Q. Did you know of the fact that as early as June, 1910, prior to June 10, 1910, the Brooklyn Rapid Transit Company was intervening in the Rapid Transit situation? A. Why, I heard of it generally, yes.

Q. How long before June 10, 1910, did you hear of the Brooklyn Rapid Transit Company intervening in the subway situation? A. I don't recall now, Mr. Moss, exactly. The same came out—in all probability it was a matter of record—it was in the papers.

Q. Well, before it was in the papers, you knew that the Brooklyn Rapid Transit Company was moving to get into the field, didn't you? A. I can't say that I did.

Q. Wasn't it discussed in the meetings of the Interborough Directors that the Brooklyn Rapid Transit Company was getting ready to enter the field? A. Not that I recall.

Q. In some shape or other? A. Not that I recall.

Q. Well, in addition to the opposition of certain members of the Board of Estimate and Apportionment, which I have called your attention to, you recall that the Brooklyn Rapid Transit

Company was endeavoring to get in, didn't you? A. I realized that they did make an effort to, they made an open proposition.

Q. Well, before any open proposition was made they made an effort — doesn't this indicate an open proposition? A. I have never see that letter, Mr. Moss.

Q. Well, here is the letter addressed to the Mayor, signed by the Chairman of the Public Service Commission, dated June 10, 1910 — A. Which refers to it?

Q. Which I believe is long prior to any open proposition by the B. R. T. Now the question is, didn't you gentlemen know that the B. R. T. was entering into the game? A. That is —

Q. Long before there was any public announcement of a proposition? A. Why should a copy of that letter be read in the Board of the Interborough Directors?

Q. Well, did not — if the Public Service Commission knew it, didn't you know it? A. I did not know that.

Q. I am not suggesting that this particularly should have been read in the Board of Directors but didn't the Board of Directors of your Company keep itself informed about the opposition that was coming along? A. Naturally, when any damn rumor that would come up, and there were lots of rumors, Mr. McAdoo once got into the proposition —

Q. Well, and Mr. Sprague made a proposition. A. I believe he did.

Q. Mr. Sprague was an eminent engineer and so was Mr. McAdoo. A. But I may have known those things at the time, you know, in a casual way, but didn't pay any attention to it.

Q. Well, you knew? A. I knew nothing of that letter.

Q. I won't say that you did know about that letter, but you knew that the B. R. T. was getting into the game early in 1910, didn't you? A. I don't know that I did know at that time.

Q. When the offer of July the 5th, 1910, was made by your Company you knew then that the B. R. T., underneath the surface, was getting ready to go in, didn't you? A. I don't know that I did. I think that the first I knew of the B. R. T. was when they made an open offer.

Q. Now, you have mentioned Mr. McAdoo's proposition. Do you remember when Mr. McAdoo withdrew his proposition?

A. Not the specific date. I do remember that it was withdrawn, yes.

Q. Do you know anything about a meeting that was had at the National Arts Club where Mr. McAdoo spoke and Mr. Willcox spoke and when Mr. McAdoo said publicly in that meeting that his offer was to the City — that he had had no answer, although it had been up before the Committee for sometime and the time limit was up — almost up; that he knew when he submitted his bid he had no chance, no matter what terms he offered; and turning to Mr. Willcox and the members of the Commission present said, “I challenge you gentlemen to say here and now, that it is not all cut and dried to turn the building of the new subway over to the Interborough.” Did you ever hear of that meeting? A. I think there was a lot of newspaper talk around this time about some such thing.

Q. Some such thing as that Mr. McAdoo in public, at a meeting that was discussing the new subways, held at the National Arts Club turned to Mr. Willcox and other members of the Commission there present and challenged them to say whether it was not all cut and dried to give the subways to the Interborough? A. I didn't have any responsibility for what Mr. McAdoo said in public, Mr. Moss.

Q. No, but I am only trying to find out now whether your attitude in the Board of Directors was taking in all of these circumstances. A. Mr. McAdoo had not been able to find the rights he already had. I don't believe that I very seriously considered that he could finance this proposition.

Q. Don't you know that there was plenty of money for any proposition that the City would entertain? A. No, I don't know that.

Q. I asked you if you read any incident in the opposition of Mayor Gaynor to your Company and to the individuals in the Company and I don't remember that you had any distinct recollection of it. I quote from an article attributed to the Mayor in the Outlook of July 30, 1910, in which, commenting upon the Interborough R. R. he says: “A chief and persistent difficulty to negotiations with the operating Company (that referred to your Company) seems to be that its Directors do not appear to be

free agents. Its thirty-five million dollars of capital stock is held by the Interborough-Met. Securities Company, a mere business holding company which also holds the stock of the New York City Railroad Company, lessee of the Met. Street Railway Company, through which the said holding Company controlled all of the surface street railways of Manhattan and the Bronx before they fell most miserably into the hands of Receivers three or four years ago, bringing loss and ruin to so many people. This stock of the said operating Company, the Interborough Rapid Transit Company, seems to be the only live asset this holding Company has. A dividend of nine per cent annually is paid on it. This dividend is used by the holding Company to pay the four and a half per cent. interest on the seventy million dollars of its bonds or debentures which it has out. Its Directors do not want this situation disturbed. They fear that if the said operating Company should go into new extensions and equipments, this nine per cent. dividend might decrease or cease, temporarily, and bring about a default of the interest on the said seventy million dollars of debentures.

This system of pyramidal finance has wrought many evils with our city railways. Of course, the Directors of the operating Company are selected by the Directors of the holding Company and are therefore subject to their finance, subject, in fine, to their absolute will."

Did you read that when it was written? A. That is the first time I have ever heard it.

Q. Well now, incidentally, isn't that really the secret of the cumulative preferential payment arranged for the Interborough to receive out of the income of the Railroad Company so that it may never fail to pay the dividend of nine per cent, thereby enabling the holding Company to pay the interest on its bonds and so preventing a foreclosure of the bonds, isn't that really what is underneath the insistent demand which carried the day in having a preferential? A. I don't know that it was. We were dealing, of course, as representatives of the people who had put their money into that Company, Mr. Moss.

Q. Well, the Mayor charged, away back there on July 10, 1910, and it followed the accusation that he made in the article of 1909,

published in Pearson's Magazine, he charged that the City could not properly deal with a Company — the Interborough Company — whose stock was held by the holding Company, which was depending upon its income from the Interborough Company to pay the interest on its bonds, which if not paid would result in a foreclosure and a wiping out of the system; now wasn't that in the minds of your Directors in insisting upon that preferential? A. Not that I recall.

Q. To be sure that the Interborough would be able to put in dividends into the holding Company and prevent a default on its bonds? A. I think what was mainly in the minds of the Directors of the Interborough Rapid Transit Company was that they were representing people who had put money into that Company; they were trying to protect that money.

Q. Yes. A. It was in there for those people. We believe that the City had very able people on its side and was trying to protect the City's interests.

Q. Yes. A. Now, we came to an agreement, an agreement which was mutual. The City is going to own these properties in the long run, Mr. Moss. We are only temporarily holders of them.

Q. We will be dead and under the ground long before that, and perhaps our children — A. I am afraid so.

Q. And do you remember what the Mayor said to that very point? You remember in this very article, in Pearson's he said, "By the time that the leases run out on the original subway, they will be a junk heap, worthless."? A. I never have seen the article before.

Q. "And that these long leases looking forward to the future, far into the future, for the City to own anything or rather to possess what it owned, was mortgaging the future to the injury of posterity." Now, I recite these things, Mr. Sullivan, to you and ask certain incidental questions — to ask you whether it was not strongly in the minds of your Directors, all the time that the Mayor was antagonized to you, and that you had no right to look to him for friendliness? Antagonized upon the personnel of your Company, antagonized upon its connection with the street railroads and its relation to what he called the pyramid of finance,

antagonized to it because he saw that the Interborough was bound up with the holding Company and that the Interborough had got to support an inflated and watered holding Company. Didn't you realize that he had an objection to you which was founded upon solid reasoning of his own mind and that he was likely to stay where he had put himself? A. I felt that there were a great many people in the negotiations that didn't understand the situation as far as the Interborough was concerned. That was a big proposition, Mr. Moss, and until they looked into it they probably did not realize the strength of the organization in so far as the service which it gave to the public as a whole.

Q. Well, we will go a little further. A. I think it was a matter of education with a great many people.

Q. Mr. Gaynor made a speech at Long Island City, October 22, 1909, widely reported in the newspapers, and said: "I had put into the Democratic platform, drew it up myself, a provision that hereafter the contract for building it, for which the City pays the money and the contract for leasing it for a term of years, be entirely separated; that the City first build it and of course has to give out a contract in order to have it built, and then when it is built or while it is being built, make a lease, fit to whoever will take it for the shortest term of years and comply with the rate of fare, the number of cars and all the conditions which the City will impose for the protection and welfare of the citizens," and the plank to which he referred was this, written by himself: "We are in favor of the building of the subways necessary to relieve the present congestion of travel. We are in favor of the building of the subways by the City itself and of the complete separation of such building, or of any contract therefor, from the leasing of subways for operation after completion. We pledge the candidate nominated at this convention to the construction of such subways as speedily as possible; we declare from experience that no necessary subway will be a source of expense to the City and cause any increase in the rate of taxation. On the contrary, the increase of taxable values of such a subway will yield in taxes more than the cost of construction and interest thereon; if it be found necessary to permit any



subway to be built by private capital, it should be done on the basis of a lease of the subway for the lowest term of years to the builder in return therefor."

Now, that was the platform drawn by Mr. Gaynor and supported in his speeches. On October 14, 1909, he said:

"Some of the people have requested that I speak tonight with regard to the railroads and the building of subways. I spoke in the most explicit manner in regard to that in my speech of acceptance and I could not be more explicit. I intend to speak on that subject in Brooklyn on Saturday night and I will pass it tonight with a single remark. During the last six years the building of subways has been entirely held up here through causes and by means and by persons you know about as much over here as I do, and you ought to know a great deal more about. For more than six years, not only has nothing been done but nothing has been even planned. Meanwhile they have connected New York by subway and New Jersey by subway and your population is leaving you and there will be more people over there than on the Island of Manhattan in a few years unless you build your subways and keep your people here and that the city will have to do, and it will cost the city nothing to do it but will be an asset to the city when it is done. There is no subway in sight which will add a decimal to the tax rate of this great city; there has been no subway mentioned which will not forthwith pay for itself and leave a large surplus over. Every subway built creates real estate values, many times the cost of its construction, forthwith and continues on forever and ever to increase them. In addition to that the city will have the rentals, the revenues, from them. Those people who talk about the city being unable to build them, that they will exhaust the credit of the city, will learn before this campaign is over that in place of exhausting the borrowing credit of the city they will swell the borrowing credit of the city, as they build them, one after another."

On October 19, 1909, at Tammany Hall, he said:

"My friends, we are going to build subways for the city — we are going to build subways. The city is going to build

subways. We do not intend that a single subway or a franchise for it shall be passed over to any of those men who erected your street railways over here in order to have bonds and stocks piled upon them, sold out to the community at the highest figure and then the road thrown into bankruptcy the same as your roads are over here tonight, and have been for three years, not a dividend paid on them meanwhile. But they cry the city bonds down in order to prevent those subways from being built. My friends, we have a lee way of one hundred and fifty million dollars at the very least, and mark and see if I am not telling you what is the truth, and if we had a lee way of only twenty-five million, we would still have lee way enough to build the subways for the simple reason, my friends, in place of exhausting the credit of the city or being a source of expense to the city, it absolutely increases the credit of the city and adds to the resources of the city.

“ I said over in Brooklyn, speaking for my two colleagues on the ticket that they made up — city ticket — with me, I said that we three were going to stand together on this subway business.”

Now, don't these statements of the Mayor and Mr. Pendergast and others, so impress your Company that you actually advertised in the newspapers that you were going to construct the railroad at your own expense? A. I don't know that that so impressed us.

Q. But did you print in the newspapers paid advertisements? A. I don't recall.

Q. In which it was stated that your railroad was going to build these subways at your own expense? A. I don't recall whether it was paid advertisements.

Q. Didn't you undertake a regular campaign to meet what you looked upon as the antagonism of the Mayor and of the other candidates and to gain the favor of the people by showing them that you would build this subway at your own expense? A. I don't recall.

Q. Well, I will call your attention to some specific matters. Now, speaking of Mr. Prendergast —

Senator Lawson.— Let me ask the witness —

Q. (By Mr. Moss.) Do you recall, Mr. Sullivan, that the In-

terborough expended over one hundred thousand dollars for advertising while this agitation was going on? A. I do recall that. We have from time to time — I can't tell you definitely — from time to time we have been putting out advertising, but whether that specific thing or not I don't know.

Senator Lawson.— Well, that is the question that Mr. Moss had asked you, and the record of this Committee shows that the Interborough spent over one hundred and twenty-five thousand, as I recall it. A. Well, if you will show me the record to refresh my memory —

Q. (By Mr. Moss.) Well, I will get to that in a few moments; I have got it along in my material —

Senator Lawson.— Yes.

Mr. Quackenbush.— But Senator —

Senator Lawson.— All these matters may enter into these so-called “prior determinations” we had down in 165 Broadway.

Mr. Quackenbush.— For saving time is the only reason I make this suggestion. What you refer to was the campaign between the Interborough and the B. R. T.; what Mr. Moss refers to was a campaign which the Interborough conducted two years before that.

Mr. Moss.— Yes, that is right.

Mr. Quackenbush.— In which we advertised “We are ready to act.”

Mr. Moss.— That is right. “We are ready to act.” Thank you. A great big headline.

Senator Lawson.— I am glad to be corrected.

Mr. Moss.— Spend your own money?

Mr. Quackenbush.— Yes.

Mr. Moss.— Well, now as to the attitude of Mr. Prendergast, I quote from his address at a mass meeting in Brooklyn, October 14, 1909. “Transit Development — that was reported in the newspapers generally — transit development is the most important specific problem that confronts the city of New York. In or-

der that the settlement of this great subject will not be dependent upon the disposition of private capital, it is essential that the city should construct and own its future subways — construct and own its future subways. In no other way will it be protected from private capital and the selfish whims of those who speculate — in whose private rights which are the inherent possession of the people. I heartily subscribe to the principle of municipal construction and control of subways, and believe that if outside interests are not willing to undertake the operation of such subways on terms acceptable to the city, it will then be necessary for the city to itself assume the task of operation, if operation will confine to its legitimate business needs and not use, as an adjunct to any political machine, there is no reason why such operation could not be pursued to the great advantage and profit of the city government.

The plight of the present surface railroad system in Manhattan, due to jobbery of every kind, prove conclusively that there is need for effective regulation of public utilities. No one who has intelligently studied the transit situation will deny that if the same measure of control had been vested in the former Rapid Transit Commission that now belongs to the Public Service Commission, better contracts would have been made on behalf of the city in its relation with present holders of subway privileges and the financial embarrassment of the surface lines, prevented through the authority exercised by the Public Service Commission over bond and stock issues.

I have no association, political or otherwise, that would attempt to influence or would succeed in influencing my course as a member of the Board of Estimate and Apportionment on the transit question or any other subject. If Mr. Shonts comes at all to the next Board of Estimate he will come hat in hand, he will come once, twice, thrice, always with hat in hand. There will be nobody on the next Board of Estimate who will take orders from Brother Shonts."

Now undoubtedly you have read that. A. I think I remember that particular part of it.

Q. Now you didn't look upon Mr. Prendergast, that prominent member, important member, of the Board of Estimate as a

friend to your enterprise, did you? A. Negotiations were going on all the time I was not directly interested in, Mr. Moss.

Q. Yes, but negotiations may come in a multitude of things but not only had you notice of the attitude of Mayor Gaynor towards your railroad company but notice of the attitude of Mr. Prendergast, and to a smaller extent but still a very definite extent, the attitude of Mr. McAneny. Now, here is a letter from Mr. Willcox. You didn't look upon him as being particularly friendly to your enterprises in the beginning, did you? A. Oh, I thought that those gentlemen were more or less trading to make a bargain for the city one way or the other; I don't know as any were so deadly unfriendly, Mr. Moss.

Q. Well, now, here is a letter of Mr. Wilcox, as Chairman of the Public Service Commission, dated July 12, 1910, addressed to Mayor Gaynor. He says:

"I have your note of July 11, acknowledging receipt of my letter of July 7th."

That was right after your application or proposition of July 5, 1910, when for the first time you proposed that the city should divide the expense with you.

"I have your note of July 11, acknowledging receipt of my letter of July 7th, in which you state that you are not aware that the Interborough Company had heretofore offered to make subway extensions with its own capital."

Evidently the Mayor had stated that he didn't know the fact.

Senator Lawson.—Was the attitude of the Mayor, Mr. Sullivan, a subject of general discussion at the Board meetings of the Interborough at this time? A. Oh, it was not generally discussed but no particular attitude of anybody —

Senator Lawson.—Wasn't the matter threshed out by the Board as a whole or was it left to the Executive Committee? A. Well, as a rule it was very thoroughly discussed by the Executive Committee and by the Executive Committee to the Board. It was all reported to the Board.

Mr. Moss.—Continuing the reading of Mr. Willcox's letter to the Mayor — I was looking for the Mayor's letter where he asked

this question of Mr. Willcox — Mr. Willcox is here answering — Willcox goes on to say:

“In a communication dated March 10, 1909, Mr. Shonts in a letter to the Commission, stated that his Company was ready to undertake construction of a two-track extension South from Times Square, with certain elevated improvements.

“Concerning the payment for these improvements, he stated, excepting the case of the cost — less than a million dollars — of the lengthening of the stations of existing subway, all of the improvements above outlined were estimated to cost fifty million dollars, would be made without resorting to the funds or credit of the city.

“We are confident that we can obtain the necessary capital to carry out the foregoing improvements if undertaken as an entirety, if the laws are so modified as to permit your Commission and the city authorities to enter into the necessary contracts.

“Now then comes this matter of the advertising. Shortly thereafter the Interborough Company began running a series of advertisements in the newspapers of the city, I enclose herewith copies of these for your consideration. My recollection is that each of these appeared in practically all of the newspapers of the city and occupied in each the same amount of space. The Legislature, at its session that year did substantially amend the Rapid Transit Act. Immediately upon the Governor signing the bill it was asked of the Interborough Company as well as other companies to re-submit its proposition in writing to the Commission, which it did, in a communication dated June 30, 1909, to which the Commission replied in August, discussing the propositions made by Mr. Shonts, to which he replied under date of September 22, 1909, the Commission, in a communication dated November 24, 1909, discussed at length the propositions contained in Mr. Shonts' two letters and came to the conclusion that it was necessary to reject them, which it did.

“I enclose you herewith copies of this series of communications which I think you will find to be a very full discus-

sion of what the Commission believes to be a proper point of view with regard to extension of the existing subway.

"Following the Commission's communication of November 24, to Mr. Shonts, they took up the matter of the new proposition from the Interborough Company in an informal conference with Mr. Shonts. The subject-matter of the conferences which he and I held are set forth in my letter of July 7th, to you.

"You will notice from the communications of Mr. Shonts the positive statements that all of the improvements enumerated by him are to be built by privately raised funds and that each of the advertisements is most positive in asserting that the city is not to be put to any expense.

"The first advertisement said the new subways we will build with private funds. The second advertisement said "These improvements will cost fifty million dollars. We ask to build them at our expense" and also, "It does not involve the city in a penny of obligation of investment risk." The third advertisement said, "Our proposal involves not a penny of the city money nor the city's credit, either now or later."

"These communications and advertisements are also all emphatic that although the cost is to be paid by private capital, the ownership is to be in the city."

Well, having engaged in an advertising campaign, thereby meeting the attack made upon you by the Mayor and by Mr. Prendergast; having persisted in your propositions to build this subway with your own money; having, through a negotiation with the Public Service Commission culminating in the letter of March 23, 1910, which was still a proposition to be worked out with your own money, then came about a series of meetings among you gentlemen and perhaps with other persons, and then suddenly on the fifth of July, your proposal to do this work, the expense being divided between you and the city. Now, what occurred which gave you the confidence, the bravery, so to speak, in the face of other propositions, in the face of the B. R. T. coming in, as indicated by that letter of June, 1910, to make your proposal confidently calling upon the city to spend money. How did you dare

do it? A. Mr. Moss, you wouldn't consider it good business for a man to have competition and put up their own money for the competition entirely, would you?

. I know, I know but is it opposition? A. It was purely on business grounds.

Q. Of course, on business grounds but I don't see those grounds. Is it opposition piled up against you? Then you flew right into the face of the opposition and say, "Yes, we will make our proposition and now we will ask you to pay for half of it. We were going to pay it all ourselves and we have been advertising to the people of New York in the newspapers that we were going to pay it all ourselves but we will meet your opposition by demanding more of you. How did you dare do it? A. Well, didn't they demand more of us in the interim?

Q. Well, perhaps they did but how did you dare do it? A. You couldn't expect a fifty million dollar proposition to run up into a hundred and fifty million dollar proposition.

Q. Did Mr. Shonts report to you that he had found a way to neutralize the opposition of the Mayor and the Comptroller? A. He did not.

Q. Did he report to you that he had neutralized it? A. He did not.

Q. Did he report to you that he had been received favorably? A. He reported to us that negotiations were going along with these gentlemen on business lines.

Q. Favorable? A. I don't remember that he said that.

Q. Didn't he report to you that they had gone on so favorably that the Mayor was even anxious to arbitrate between you and the Public Service Commission? A. He reported to us that negotiations were getting along favorably. Yes, I will admit that.

Q. And so far that the Mayor was ready to act as arbitrator and help you along with the Public Service Commission? A. No, that part I won't go so far as to say that.

Q. Now, what was it that made the Mayor change front? A. I suppose that the Mayor saw that this was a large proposition and that eventually the city was going to get the benefit of it, Mr. Moss, nothing else.

Q. Well now, I am travelling over somewhat familiar ground but I am going to take it with you somewhat as with the other



directors, this proposition of July 5, 1910, which for the first time proposed that the city should spend money, had no provision for preferential such as you finally achieved but had a provision that all of the profits of the subway should belong to the city for five years and that thereafter they should be divided even between you and the city without these preferentials. Now, illustrating that, I quote from a letter which is already marked "Exhibit No. 7," of March 24, 1916, by Mr. Shonts, addressed to the Mayor. He says:

"In order, however, to meet your objections, we are prepared to modify this in submitting our final proposal to the Public Service Commission so that the making good of any temporary deficit by the city would be limited to the payment of any interest on its own bonds not met by the net earnings of the road and all interest so paid, together with a sinking fund of one per cent. per annum from the commencement of operation of the extensions, to be a preferred and cumulative charge against the net earnings of the road, to be paid in full before any division of the profits is made."

So that the only accumulation that was to be there was accumulation for the protection of the city. Now, when you got to December of 1910, or rather in the propositions in 1911, you entirely abandon that and begin to demand preferentials. What new circumstance came in by which you change your policy of trying to conciliate the city, and suggesting accumulations and preferentials for its benefit, you slip in accumulations and preferentials for your benefit — no hint of any benefit to the city. What occurred? A. When demands were being made upon us all the time for service —

Q. And the more demands that were made, the more you rose and the more you demanded. A. Why, naturally we —

Q. And finally won out. A. We naturally could not keep on building railroads indefinitely at our own expense. The first was a limited array of greater New York, after that we were extended out in the country. We couldn't afford to run a proposition for the benefit of posterity and pay the bill.

Q. I know but you were perfectly willing to do that in 1909, you were perfectly willing to advertise it, you were perfectly willing to put in your propositions, propositions first requiring

all money of your own Company, propositions requiring that the first several years of profit should go to the City, and then even divide up without preferentials, propositions then when preferentials were suggested that they should be in favor of the City but finally you come out fullfledged in 1911 with propositions for the use of the City's money and for preferentials against the City that would so eat up the income that the City couldn't get any profit for years and years to come. Why did you get the courage to do it? A. Mr. Moss, the records must show that the proposition was an entirely different one in 1909 than in 1911.

Q. Of course it was and I am telling you that and asking you to account for it. A. We were asked to do greater things—greater demands were made upon us. It is only a limitation that a transportation company can go to.

Q. Did you know that the Mayor, as his mind moved more and more towards your Company and towards even the possibilities of a dual system, that the Mayor had to contend against the criticisms of public men and the criticisms, sometimes, of his own friends, many of which appeared in the newspapers. A. Well, there were so many general criticisms, Mr. Moss—

Q. There was an awful lot of criticisms, weren't there? A. Yes.

Q. Here is a letter of the Mayor's old friend, C. Augustus Haviland, an old Brooklyn lawyer (I find this in the Mayor's files) a letter written from the Grand Union at Saratoga Springs, July 9, 1911. Now we are swinging into 1911, when your demands were getting very strong.

“Hon. Wm. J. Gaynor.

“Dear Mayor:

“I hope you have read the article in the World today, on “High Finance in City Subway.” It charges that in the B. R. T. deal there is thirty-three million dollars of honest graft.

“Must the Gaynor administration go down in disgrace equal to that of Tweed, Tweed's time, because of this McAneny surrender reported as approved by all members of the Board of Estimate?

A. Did I understand you to say "B. R. T."?

Q. That was B. R. T. I said. I include the whole thing because B. R. T. was then an active competitor with you and was getting in with both feet. You hesitated about the B. R. T. because you didn't think the Mayor was very friendly to it. A. To the B. R. T.?

Q. Yes. A. I don't know anything about the B. R. T.

Q. Who was friendly with the B. R. T.? A. I haven't the slightest idea.

Q. No? Well, was — A. Whether anybody was friendly to B. R. T. or —

Q. Was the Mayor friendly to it? A. I never was a member of the Board of the B. R. T.; never owned a dollars worth of the stock. I had no interest in it.

Q. Well, now, there was a little period in July, in July, 1911, when the Mayor swung away from you — he had been favoring you — he swung away from you and for a short time appeared as a critic, but only a short time. He swung back to you. I have in my hands the original letter of Mr. Gaynor to the people of New York City with his own interlineations in it, and you see from the number of those interlineations how carefully this letter was prepared, and in order to get it upon the record, I will read it in.

"City of New York,

"Office of the Mayor,

"July 19, 1911.

That was when there was a preferential proposed of nine per cent. It finally went through at eight seventy-six, wasn't it? But this was when it was nine.

*"July 19, 1911.*

"To the People of New York City:

"I regret exceedingly to see this thing being done; it is needless; it is a wrong and a humiliation to this city. It was not in sight a few months ago; the city is being overreached by a few financiers of great ability. They have actually induced the city officials to agree to subsidies, the companies to equip and operate as though the city were in

such civil case as to require that to be done in order to get necessary subways. The city is to put in all of the money for construction of subways for the Brooklyn Company, according to the scheme now ready. That Company is to put in nothing for subway construction; the proposed agreement is that the Company is to get nine per cent. or a little over, on its elevated railroad capital or value, which is about forty million, before the City is to get even the interest which it will have to pay on other corporate stock, issued to raise the cost of construction. The Interborough Company is to put in one half of the cost of construction of the subways which go to it and the city the other half, according to the agreement being made. The proposed agreement with the Interborough is that it is to get nine per cent, on its present capital stock, of thirty-five million dollars and nine per cent. on the additional capital it is to put in for construction and equipment before the city is to get even the interest which it will have to pay on its corporate stock issued for construction. A few months ago the Interborough Company was offered to put in one half of the construction cost and all of the equipment costs on even terms with the city except that the interest of its bonds for new capital should have precedence over the city's corporate stock and that they would have weighed. This has been gradually frittered away and the present proposed agreement substituted.

The case is much worse as this bare statement shows. Why pay this nine per cent. preference to the Interborough? In my article in the Outlook one year ago, on subways, I explained all of that and showed how this matter of nine per cent." (that is what I read to you a few minutes ago) "how this matter of nine per cent. would be a constant obstacle to fair dealings with the city by the Interborough Company for subway construction and operation. The case is exactly this:

"The shares of the said capital stocks of thirty-five million dollars of the Interborough Company were transferred several years ago to holding Company or Trust, which is

the usual obnoxious term. I refer to the Interborough-Met. Co." (It is not a railroad corporation.) "The Interborough Railway Company thus became locked fast in the grasp of such holding Company, which straightway financed this thirty-five million dollars of stock by issuing seventy million dollars of debentures or bonds against it, these bonds bearing four and a half per cent. interest so that it takes a nine per cent. dividend on the said thirty-five million dollars of stock to pay such interest, this nine per cent. on the stock is necessary to prevent a default of interest on the said bonds and has heretofore been paid regularly. If it should be stopped, the holding Company or Trust, that did this nefarious watering or inflating, would become insolvent. I never expected to see the city officials give their aid to safely intrenching and perpetuating such baneful financing as this, from which our country has suffered such moral degeneration and material wrong. The street surface railroads in Manhattan and the Bronx were financed in the same way, only more so, and were in the grip of this same holding Company or Trust, but the financial pyramid laid on them by such methods tumbled to pieces about five years ago, the companies became bankrupt and went into the hands of Receivers and are there yet, thousands of honest persons being ruined by the smash-up.

"This present action of the city officials is now saving the Interborough Railway stock inflation, which I have described, from meeting the same fate. The Brooklyn inflation, which is being entrenched and saved in the same way, is even worse. This Brooklyn Rapid Transit Company, instead of being a railroad company, as the name deceives many to suppose, is not a railway company but only a stock jobbing company or Trust, by stock ownership and a system of long leases, namely, of nine hundred and ninety-nine years, it controls substantially all of the railroad companies in Brooklyn, surface and overhead. This inflation was organized under the late ex-Governor Flower and two or three others who are in it yet, and are now over reaching the city officials and craftily getting hold of the City's credit

to perpetuate such inflation. Flower and his associates ran their holding company's stock up to one hundred and thirty-seven and then it dropped down to twenty-six. It was, in fact, worth nothing. Flower died suddenly and the inventory of his estate showed that he had completely unloaded the stock. Many thousands were basely swindled! The thing was rehabilitated at about sixty million, and has been growing larger ever since; its character is well known; it remains to be said that annual dividends as high as ten per cent. are guaranteed to be paid to the underlying actual railroad companies controlled by leases of nine hundred and ninety-nine years by the said holding Company or Trust.

"And this financing is bound very soon, if left alone, to fall in a heap as it did in the case of the roads in Manhattan and the Bronx. Now, to be saved and perpetuated by the aid of the city's credit and co-operation.

"We can have subways without entering into such alliances and contracts as this. It would be beter for the city to operate its subways than do what it is now being committed to. It now, under the law, builds and owns its subways, let it operate them also, sooner than lend aid to the saving and perpetuation of a generation of past stock swindles, but it does not need to operate them. Proper operating contracts can be made as we set out to do at the start. I am only too willing to accept the mature views of competent persons instead of my own at all times, but this is a case in which a sense of common, every-day morality forbids that I unite in what is being done. I have too long written and spoken against such damnable rascalities, to turn about and ally myself, as Mayor of this great and intelligent city, with this.

"I shall go out of office without putting that stain on my name."

How did you succeed in reversing the Mayor if he had put himself in that proposition? A. Was that letter published to the Mayor?

Q. It has been published. A. Where? I have never seen it before.

Q. It was published in all the newspapers; it was issued to the people of the City of New York and published. Given out by the Mayor and published. Now, Mr. Sullivan, how did you succeed in getting the Mayor to reverse himself? A. I never had any interview with Mayor Gaynor.

Q. Of course you didn't but who did? A. Why, Mr. Shonts has testified he had.

Q. And what were the arguments? A. He has testified to that; I was not present.

Q. Mr. Shonts testified that he met the Mayor pleasantly, happily, in April 1910; that the Mayor seemed to be willing to discuss things pleasantly and kindly; that a series of negotiations were had; that matters were progressing comfortably; that gentlemen were appointed to help the Mayor, Mr. Kingsley Martin and some other man; that figures were arranged and the proposition of your Company, dated July 19, 1910, was passed by the Mayor or pushed along by the Mayor, to the Public Service Commission with many expressions of interest and not of antipathy, and he expressed himself very strongly about your proposition of December 19, 1910, when you were proposing to give the City the first five years of profits and to divide the profits thereafter evenly and not put in any preferentials against the City. Then came along your proposition early in 1911 when preferentials began to be talked about. Then suddenly the Mayor awakd to this idea of preferentials, remembering his article in the Outlook, published back there in 1910 that I read you, realized that the preferentials was a scheme by which the Interborough would have to pay out the nickels of the people dividends that were necessary to the Inter-Met., to pay the interest on its bonds and save it from — A. The Interborough-Met. was entitled to that preference.

Q. Oh, undoubtedly! Undoubtedly! You would have gone to people, and all you financial gentlemen would have gone up where the woodbine twineth — up the spout. A. We had —

Q. Now, wait a minute! Wait a minute! Don't get away from the logic of it. Now, I have traced how the Mayor suddenly, here in July, 1911, came back to his old position of in-the-election-days, came back to his old position when he saw the

pyramid of finance that was discussed in the articles in Pearson's and the article in the Outlook came back to him — called it damnable rascality, said that his administration would never stain itself by lending itself to an arrangement of that sort. Now, how did you get the Mayor back? A. I can't answer your question because I don't know it.

Q. Prendergast was standing on the same basis, only saying things more sharply, even, than the Mayor did. A. Do you know there was a period, Mr. Moss, when we dropped out of this entirely?

Q. And you came back. You waited and you let the B. R. T. fret itself out and when you came back you came back harder than ever, with more confidence than ever and you saw this poor, old Mayor, who had written about "damnable rascalities" eat his own words in public. A. Well, what do you mean to imply by that?

Q. I don't imply anything. I ask how it was done. A. Well, I have told you that I didn't know.

Q. I am asking you because you represent the second largest holder of stock in the Inter-Met. Morton F. Plant and you ought to know something. A. And there were interviews going on all the time. I have told you that, Mr. Moss.

Q. But it was your business, Mr. Sullivan, to represent the second largest holder in the Inter-Met. and I assume that you know what was going on. A. The records of the Company will prove — you have had the records of the Company. If you will let me have them and let me refresh my memory I may be able to answer your question.

Q. You may refresh your recollection with anything that will enable you to speak, and if I remember right, yesterday you would have been willing to have given Brother Shonts that Prendergast talked about that would have to come to the Public Service Commission and the Board of Estimate with his hat in his hand — I understood you yesterday to say that you would have been willing to give them two hundred and fifty thousand instead of one hundred and fifty thousand. What would he do? Wasn't he the man that won over the Mayor? Wasn't he the man that won over Prendergast? Tell me that. A. Why, he



was in the thick of the negotiations.

Q. Did you ever compliment him upon beating down those strong men? A. Never that way, Mr. Moss. No.

Q. Did you ever know a stronger man in New York than Gaynor? A. I never knew Mayor Gaynor.

Q. Well, you know of him. A. Yes.

Q. You know his history. A. Yes.

Q. Did you ever know a stronger speaking man in New York than Prendergast? A. No, I don't know that I did; he is a very prominent man.

Q. Very prominent man and expresses himself with strong language and forcible voice. A. A very able man.

Q. Did you ever compliment Mr. Shonts on overcoming the opposition of those men and making them go back on their pre-election pledges and making them eat crow in public? A. I never did.

Q. Why didn't you? A. Why should I?

Q. You didn't want to know, did you? A. I didn't think there was anything to know other than the general —

Q. Nothing but what would be embarrassing. A. Not the way that you put it, Mr. Moss.

Q. I? A. I complimented Mr. Shonts upon his —

Q. Yes. A. — upon his ability to put through a contract which I thought was mutually acceptable —

Q. Mr. Sullivan, I am going to ask every member of the Board of Directors practically that question. A. All right, sir.

Q. Because there must be an answer to it somewhere. That is one of the most extraordinary things that ever was done in the history of man — the overcoming of those oppositions, — and there never has been an explanation of it given, and I think an explanation is demanded by the situation. A. But not the way that you put the questions.

Q. I don't put the question, it puts itself. The question — A. Beating down the opposition —

Q. The question is its own answer up to date. If my questions have seemed to contain an innuendo, it is simply because the situation puts it there and I only speak audibly what a whole community thinks and often says. There is a mystery. There

is a question that has never been answered and if you gentlemen don't answer it in a clear and convincing way you can't blame people for putting their own construction upon the situation. A. They can't put a construction on a thing that isn't true.

Q. All right. Who do you think Mr. Gaynor meant when in his letter he spoke about the City being over-reached by a lot of sharp financiers. Who do you think he meant? A. I don't know.

Q. Why he meant your associates, what else could he mean? A. I am not responsible for what Mr. Gaynor wrote.

Q. Of course you are not responsible for what he said but he forged that letter, evidently, in a furnace; it is full of heat and action. Today it is expressive of what sounds like the righteous indignation of a strong minded man with a gift of experience and a wisdom and an intuition which had been put to the test many times, and he goes back to the finances of the surface railroads and lines them up with your railroad and calls your railroad by name, and calls the preferential scheme a damnable piece of rascality intended not for the benefit of the City of New York but intended to bolster up that holding corporation which would go to pieces if it wasn't done. That is what he says; he says it is a wrong and a humiliation to the City; the City is being over-reached by a few financiers of great ability. Who did he mean? "I have too long written and spoken against such damnable rascalities to turn about and ally myself, as Mayor of this great and intelligent City, with them. I shall go out of office without putting that stain on my name." Now, in less than a year, in less than a year the position was absolutely reversed. Publicly, I mean, by acts done, but in negotiations, reversed much sooner.

Senator Thompson requests us to adjourn now.

Senator Lawson.—I wanted to ask some questions of the witness.

Mr. Moss.—Shall we let it go?

Senator Lawson.—How much longer?

Mr. Moss.— Well, it will take me a little while— half an hour probably. Mr. Sullivan, we will have to resume after recess.

Senator Lawson.— Have you much longer— have you very many on the stand?

Mr. Moss.— I think it will take me about a half an hour.

Senator Lawson.— We will suspend now until 2:30.

Adjournment.

## AFTERNOON SESSION.

in 214

Witness, MR. FRANCIS DE C. SULLIVAN.

Senator Lawson presiding and examination by Mr. Frank B. Moss:

Q. I suppose, Mr. Sullivan, you saw the printed majority report of the Transit Committee of the Board of Estimate and Apportionment, dated January 5, 1911, signed by Mr. Prendergast and Mr. Mitchel? A. I may have.

Q. Yes. At that time they had separated from the Mayor? This is prior to the Mayor's letter which I read you earlier in the day, dated July 19, 1911. The report I have in my hands was dated January 5, 1911, and it was signed by Prendergast and Mitchel as a majority report, the Mayor signing a minority report, taking the position substantially in rendering report with your railroad. I want to call your attention to this language in the Prendergast report. Upon the question of general principles your Committee feels that this Board should first consider whether the Commission which its members hold from the people by virtue of their election contains a mandate upon this issue— and speaking of that issue I think I will go a little further back and quote— "Your Committee is convinced that the adoption of the Interborough's proposal will mean the certain abandonment of all hope of physically independent subway system capable of severance from the Interborough system, and over which the City of New York might exercise the kind of control contemplated by the Rapid Transit Act in its provisions for the grant of indeterminate franchise. Your Committee will now consider the advisability of such a step. This question divides itself naturally into a

discussion first of general principles, and second of detailed advantages and disadvantages.

Upon the question of general principles your Committee feels that this Board should first consider whether the Commission which its members hold from the people by virtue of their election contains a mandate upon this issue. If it does, then only the weightiest reasons, and only such as may have arisen since the time that mandate was issued, should lead the members of the board to act contrary to their commission.

What was it the commission received by the members of this administration from the people at the last municipal election? Seven of the eight members of the present Board of Estimate were elected on a platform that declared all future subways should be owned by the city, should be built by the city, should be built with the cities funds, construction by private capital not being permitted, except when it is positively demonstrated that the city is financially unable to keep up with all the demand for transit extension, and then only on terms that will preserve strict and effective municipal control. This absolutely committed the candid thousands to the construction of a new and physically independent system of subways, physically independent because strict and effective municipal control, cannot be exercised over an extension or section which for its very existence as an operating unit, depends upon a main stem over which the city has not and can not obtain control for fifty years. When the people on election day approved the declaration that future subways should be built with city funds, it was not because the tax payers preferred to spend their own money rather than the money of the corporation, but because it was clearly appreciated that only by excluding private capital from the construction of the new subways of the city, could the city secure the kind of control which would enable it to substitute a satisfactory for an unsatisfactory operator. This board is therefore called upon to state whether with a clear commission from the people to proceed with the construction of the subways with city funds, and to establish effective control over them in the city's interest, it shall abandon the principles upon which the members invited the suffrages of the people, an assent to establishing a monopoly and abandon control.

As already stated, only the weightiest of reasons arising since

the popular determination was had, would justify that course. Your Committee submits that in place of the existence of weighty reasons in favor of such a course, there remain the gravest reasons against it.

Some of the reason your Committee submits are to be found in the history of the relations of the Interborough Company with the city of New York, and the various efforts to compel adequate service by that corporation. That history discloses a corporation always reactionary and always unwilling to comply with the reasonable requirements of authority to improve its system, its service or its equipment, a corporation always willing to disregard the public comfort, always contemptuous of authority in all the compulsion brought to bear through the machinery of the law.

Your Committee points out that the attitude of the operator of the present subway displayed by its disregard of public convenience, the contempt which it has shown for the reasonable orders of the Public Service Commission, and its resistance to them has been due to the fact that that company holds the present subway under a long term lease which is not susceptible of modification by the city or by any municipal or governmental authority. The Interborough Company entrenched behind the unassailable rights granted it by virtue of its present lease, can afford to flaunt the city authorities and the Public Service Commission, and despise public indignation since the public has the option either to ride under the conditions offered by the Interborough Company or to walk.

And omitting a sentence, which it is not necessary to read for the connection, I proceed: If, as is the case under the terms of the Interborough' proposal there be neither the financial ability on the part of the city to exercise its option to assume control nor the physical lay-out of routes such as to make possible and attractive their independent operation, if taken under control by the city, then will the advantages of the indeterminate form of franchise be nullified and lost, and the operation of such a system remains in the position of the present operator; namely, independent, contemptuous and uncontrolled.

Omitting another sentence which is not necessary for the connection of the thought:

“ For all of the foregoing reasons, therefore, because of the de-

cision of the people in favor of municipal control of future subways, because of the history of the Interborough's relations with the city of New York, because of the quality of service which it has rendered, because of its attitude toward the public and authority, and chiefly because municipal control may be exercised over future subways only if their physical independence be established, your Committee is finally convinced that the only solution of the transit problem in New York will be found in the immediate construction of an independent subway over which the city will be at all times in a position to exercise control.

Respectfully,

“ William A. Prendergast,

“ John Purroy Mitchel.”

Mr. Moss.—McAneny's name was not signed to that. He was not a member of that committee. This committee consisted of Mitchel, Prendergast and Gaynor. This was not the conference. This was the transit committee of the Board of Estimate and Apportionment.

Now, Mr. Sullivan, no doubt you have read that before, but it brings to your mind, does it not, that the position taken by Mr. Prendergast before election when he said if Mr. Shonts came down to the Board of Estimate, he would have come there with his hat in his hand was sustained as late as January 3, 1911, by the same elected controls, Mr. Prendergast and he was an enemy to your Company? A. The records would so show.

Q. Why, he speaks of your Company as contemptuous, speaks of your Company as unsatisfactory in every particular and as unsafe party with which to deal. There could be no misunderstanding of his position, could there? A. Why, I don't think it is for me to discuss his position one way or the other, Mr. Moss.

Q. Yes, of course, I realize what you say, it speaks for itself. Now, it was less than a year after that that the comptroller, Mr. Prendergast, was signing contracts that embodied the situation which he condemned here and signing contracts which drew stronger against the city and in favor of the Interborough than stronger contracts which were stronger against the city and in favor of the Interborough than the proposition that were pending at the time he wrote this report. A. It gave the city a dual service, it took away from us the main artery up Broadway, Mr. Moss.

Q. Yes, it took away from you — A. It took more money to do this thing. You know it was an entirely different proposition, but the same stipulation as to one co-operating the subways at all. Now, in comment on the bad service there, you gentlemen know that the original Interborough was built to carry about four hundred and fifty thousand people. It is carrying about a million. It had to be very bad operating conditions, which would allow that.

Mr. Moss.— He didn't call them bad operating conditions, he said contemptuous behavior, that is, refusing to comply with the orders of the Public Service Commission and telling people they could walk if they didn't want to ride. A. I think that as far as I have heard they have endeavored to comply so far as they can. We can't do everything, we can't do the impossible.

Q. Well, what I want to get at Mr. Sullivan, is whether you had knowledge of any consultations, knowledge of any discussions, knowledge of any reports which had to do with efforts or arrangements by which this antagonistic comptroller was to be brought in line with your propositions. A. If you mean anything sinister, no, I don't mean that.

Q. Not necessarily, not necessarily anything sinister or otherwise. A. Our people were having negotiations all of the time with these gentlemen from time to time, that is all.

Q. I know, but if they were not sinister — and I don't mean to say they were not in this question, because I don't want to fore-judge the situation, but if there were arrangements which were not sinister, I would prefer to hear them. A. Well, do you mean what particular arrangements?

Q. What was reported in your meetings was discussions due to methods to be adopted to bring this antagonistic comptroller into a better state of mind toward your Company. A. Well, there was no discussion other than a general discussion with these men meeting from time to time, and explaining our side of the position, and listening to their side of it.

Q. Explaining the situation? A. Yes, that is all. That is all the knowledge I have, Mr. Moss.

Q. I want to ask you right here if you can recall when and how the idea of these preferentials came in. Who brought it in? A. I don't recall.

Q. Did it originate with the Interborough? A. That I don't know. I really cannot know whether it originated with the Interborough, whether it originated with the B. R. T. I really don't know.

Q. You don't know anything about it? A. No, I do not. I don't recall it.

(Senator Thompson now presiding.)

Q. (By Mr. Moss.) Have you any opinion as to when the city of New York will begin to gather in profits from this new subway? A. I think there may be a guess, Mr. Moss, on anybody's point.

Q. Well, I would like to see if you are willing to record an opinion. A. Oh, I should think that they would probably commence to get their interest in four or five years.

Q. In four or five years? A. I think so, yes.

Q. Has that been discussed in the Board of Directors? A. It has been discussed in an informal way.

Senator Thompson.—You understand, Mr. Sullivan says your question wasn't complete.

Mr. Moss.—Yes, but if that, of course, only means that interest has that been discussed in the Board of Directors? A. Well, it has been discussed in an informal way among the men. I don't know whether as I can say formally before the Board.

Q. Well, in four or five years they may be getting interest, that is interest on the bonds that were issued for the city's part of the work, and until that time comes the interest will have to be provided by taxation, wouldn't it? A. I think under the contract we have the privilege of paying it and collecting. Paying it out of our surplus if we desire. It is a charge against the city until we do get whatever we use back. It is a question they have to meet with the fluctuation.

Mr. Quackenbush.—Mr. Sullivan has in mind the provision by which the Interborough takes care of any deficits upon its own, the city, of course, would have to provide for itself. A. The city, of course, would have to provide for itself.

Q. (By Mr. Moss.) That is what I thought. This deficiency in the bond issue would have to be provided by the city by taxation. A. Yes, sir.



Q. Well, now we have reached the point perhaps, some years ahead when the profits of the Interborough will begin to pay interest on city bonds. I suppose at first it won't pay all the interest. It will pay only a part of it. A. Well, of course, it depends entirely upon the earnings, Mr. Moss.

Q. Well, are the earnings up to the expectation? A. At the present time?

Q. Yes. A. Yes.

Q. Have they proved so? A. Yes.

Q. Up to the figures that were made for the city, and upon which the city relied? A. Well, you know my recollection is the city made different figures from what we made. I am not counting on the city figures.

Q. Did you say that the city had figures that you didn't have? A. They may have. When I say that, I don't consider, we hadn't seen those.

Q. I know, but did the city figure upon your carrying more passengers than you yourself figured? A. That I don't recall. That was more or less.

Q. Well, I have an idea that the city will begin to receive profits. A. Well, I should say that within their interest — back interest will be paid in about fifteen years, ten or fifteen years.

Q. About ten or fifteen years to get profits. Are you aware of the position that your company has taken with reference to the application of the Motor Buss Company for franchise to run motor busses in the City of New York. A. The Interborough Company has taken?

Q. Yes, you know about the Interborough's position to the application of the motor bus company for a franchise to run in the City of New York on various routes. A. Why, I think in so far as taking away the profit of the Interborough, do you mean in connection with the New York Railways?

Q. New York Railways and the subways, the Interborough Company. A. Well, it is the short haul proposition I think they did take some stand in that.

Q. Yes, Mr. Quackenbush was kind enough last night to give me some copies of the briefs which have been filed recently. They contain some statements which while you are upon the stand I would like to get into the record.

I am quoting now from a brief filed by William D. Guthrie and James L. Quackenbush as counsel for the Interborough Rapid Transit Company, and the New York Railways Company by John M. Bowers, counsel for Third Avenue Railway system, by George D. Yeomans, and Andrew M. Williams of the counsel for the Brooklyn Rapid Transit system, filed with the Board of Estimate and Apportionment, December 13, 1915. On page 7, while I will start on page 6, I think I will have to go back to page 6. It gets interesting as you look at it.

“To have the tables submitted and analyzed the investment of the City of New York in the new dual system, but as the form of that statement was questioned, the figures will be stated somewhat differently, although to the same effect. It is, of course, quite immaterial what words are employed to designate particular items or to describe the relation of the city to the joint venture. In a business enterprise any one entitled to be paid a certain sum before another interested therein is entitled to any share, is accurately said to be entitled to a preferential as to each item, and as to the sum of the preferred items. And any one investing funds in a joint business enterprise in which he is to receive no return whatever except out of the net profits is accurately said to be a partner in that venture.

“So much is this so that the legal test of partnership in the State of New York as declared by the Court of Appeals is sharing in the net profits as such and Chief Judge Cullen declared in speaking of the dual system an arrangement this contract creates a partnership, and a very one sided partnership at that between the city and the railroad company. There, now, it seems to be entirely clear.”

By the way, your opponent, Mr. Quackenbush, took you up there and said that you had quoted the losing opinion, the dissenting opinion. And he said that you quoted Judge Cullen when you liked what he had said.

Mr. Quackenbush.—Well, I think you were present and I made an oration on that same subject some months ago.

Mr. Moss.—Yes.

Mr. Quackenbush.— What is said there, I stated some months ago.

Mr. Moss.— Well, that is your own opinion.

Mr. Quackenbush.— That is my opinion.

Mr. Moss.— Your opinion now is that Judge Cullen stated the right and that the city is a partner of the Interborough.

Mr. Quackenbush.— As to the B. R. T.—

Mr. Moss.— Oh, as to the B. R. T., yes.

Mr. Quackenbush.— That is a clear distinction to my mind.

Mr. Moss.— All right, I don't want to put you in wrong. (However, he goes on reading.)

“ However, it can hardly be disputed that the city has come to invest sixty-six million in the Interborough Subway system as against eighty million to be invested by the Interborough Rapid Transit Company — that includes, of course, all elevated railroads — and invest one hundred and five million in the Brooklyn Subway System as against sixty-one million to be invested by the Brooklyn Rapid Transit Company, nor can it be disputed that the city is to get no return upon its enormous investment of one hundred and seventy-five million dollars until after the operating companies have realized their full agreed profits plus six per cent. upon their new investments aggregating one hundred and forty-one million dollars. Then, it sets up that the total of the Interborough's preferential and prior lien is eleven million, one hundred and thirty-five thousand dollars, and that the total of Brooklyn's preferential and prior lien on net earnings is seven million, one hundred and sixty thousand dollars, and that, therefore, the preferentials and prior liens in favor of the operating companies as against the city's interest in the net earnings of the dual system, aggregating the total sum of \$18,295,000 per annum and these preferentials — that is in capitals in the brief — \$18,295,000 per annum, and these preferentials and prior liens are cumulative — that is in capitals — thus reasonably assuring the operating company of

a full and profitable return at least ultimately — at least ultimately — upon their investment, and placing the principal risk of the enterprise upon the city. Obviously, any project which will diminish the net earnings of the dual system must primarily prejudice the city; that is, if jitney busses are allowed to run, so that poor people can have a ride in an automobile for five or ten cents. It jeopardizes the interests of the city as a partner in this dual system — dual subway — cannot afford to let folks ride in these jitney busses because that great preferential of over eighteen million dollars has got to be made up cumulatively — I quote again — “Obviously any project which will diminish the net earnings of the dual system must primarily prejudice the city and diminish its chance of recovering a return upon its investment such diminution of net earnings will moreover defer for several, if not many years, the receipt of such earnings to place the city’s outstanding securities in the class of revenue earnings bonds in order to enable it to release an equivalent amount from the constitutional limitation upon the debt limit.

“In addition the city is interested even more than the operating companies in the net earnings remaining after providing the preferentials and prior liens, because the city’s interest at say four and a quarter per cent. upon \$175,000,000 and sinking fund or amortization must be provided out of such earnings. Any competition which will diminish the net earnings of the dual system must inevitably deprive the city of a part or if not the whole of this expected benefit to the tax-payers of the city.”

Senator Thompson.— Well, is the city a partner in the running of those green busses up Fifth Avenue, is the city a partner in that? A. I don’t know. Not that I know of.

Mr. Quackenbush.— No. A. Not that I know of at all.

Senator Thompson.— They don’t ever become a partner.

Mr. Quackenbush.— We offered to make them a partner. They wouldn’t take it. What we are trying in this brief is to save them from themselves, and what we did was to offer to put the green busses in on a contract that the City might write on

the principles of the present subway contract which the City itself, and what the city officials seemed to be talking about and encouraging, which Mr. McAneny once more made a report favorably, as to competition in the buss business, and encouraging the coming in of the Company represented by Mr. Willcox, formerly the chairman of the Public Service Commission, and Mr. Colby, former counsel of this Committee, and competing with the green bus line, our position being that they had better regulate the monopoly and take a fifty per cent. interest in the profits.

Mr. Moss.— Now, the point is right here. There are a good many people that think the City would be helped by having these busses running over the routes that have been proposed. But Mr. Quackenbush in a very excellent brief has drawn attention to the fact that that is a luxury which the City can't afford, because if the City runs, allows these busses to run at low fares, it will draw passengers away from the subway and if it draws passengers away from the subway, it won't be able on the earnings to provide for these preferentials, and the City which is a partner in the enterprise of running the subways is bound to suffer. It is a situation where you want to buy an automobile and you dare not do it.

Senator Thompson.— Well, I don't understand. I don't understand that for this reason: As I understand it, the Interborough Railroad Company owned — I call them green busses.

Mr. Moss.— Yes.

Senator Thompson.— Now, after you get the dual subway contracts in operation which isn't yet, but will be — then, now, I understand that the green busses will still be owned by the Interborough Railroad Company that the City wouldn't participate.

Mr. Moss.— That is right, I believe.

Senator Thompson.— Well, now, how does the City get help from that, that is something I can't discover. What difference it makes as to how many busses are run on Fifth Avenue because there is no limit to the number that the Interborough Company run, and what difference does it make to the City's share of

the Interborough receipts as to how many companies run busses on Fifth Avenue. That is what I cannot get into my head.

Mr. Quackenbush.—I will answer it, if you will allow me. The Fifth Avenue bus is a ten cent service, giving a seat for every ten-cent fare and not putting in any unnecessary persons to stand. It runs on Fifth Avenue and Riverside Drive for the most part. The proposition put in by Mr. Willcox and Mr. Colby —

Senator Thompson.—It is a pullman service.

Mr. Quackenbush.—As I have said, in this brief it furnishes a character of vehicle for which there is a limited demand in this City.

Mr. Mess.—That is it.

Mr. Quackenbush.—The green busses, and if their places are not reached by surface lines and not wanted, and where surface lines are not wanted on Fifth Avenue and Riverside Drive for five-cent fares. The proposition put in by Mr. Willcox and Colby's lines is to run a five cent bus all over the City, not only where there are surface lines, but right over the existing subways and extensions of the subways for five cents for the most part.

A ten-cent fare for a long haul. My argument was that they were giving this Company a short haul. From the center of the City for a five-cent fare to the detriment of the City's own subway, which every traffic man agrees must have the short haul five-cent fare to justify its long haul five-cent fare. And more that we might not be in the position which is running through the mind of the Chairman, of having the bus companies' profits in our own treasury, by the way and stock is held by the holding Company and not by the Rapid Transit Company — well, I make my opinion of that with acceptance for the accuracy of the records — for that there might not be a claim that we were selfish in our business, we said we would put the busses on the logical extensions which we concede should be made up Washington Heights section, and in some other places. In partnership — and I use the term partnership with the City on precisely the same terms of the subway contract or similiar terms to be

written by the City, and I say that that is a fair, frank way to deal with the City.

Senator Thompson.— This brief is submitted in conjunction with an offer to bring the busses in with the other transportation facilities covered by the dual contract.

Mr. Quackenbush.— Exactly.

Mr. Moss.— Was that suggested?

Mr. Quackenbush.— Oh, yes. Yes, and instead of reading in that way I say the City is getting its own history which they started out to bring competition against the Interborough through the metropolitan before the merger. Afterwards through municipal ownership, afterwards McAdoo, afterwards with the B. R. T., all the time getting more complicated, and they got into so many railroads, so many things that they had to put the preferential on in order to make it a possibility. I am urging them not to repeat that in the bus business.

Senator Thompson.— Well, that isn't the way it strikes me.

Mr. Quackenbush.— I know it is just a matter of argument.

Senator Thompson.— The way it strikes me is this, that you people ought to learn after a while that you musn't offer the City too good a contract for the City.

Mr. Quackenbush.— They might take it.

Senator Thompson.— No, they won't take it.

Mr. Quackenbush.— I say they might sometime. So far they haven't.

Senator Thompson.— Well, now, the history they have shown is, they have refused your contracts each one has been worse for the City until they finally accepted the worst one that was offered.

Mr. Quackenbush.— Absolutely, and the reason for that, the fundamental thing is instead of looking at it as we did as practical business men, having some knowledge of transportation and railroading, they have such illogical theories and reasons which

were put by the Rapid Transit Railroads. These cost millions of dollars a mile all over the City and the result was that by reason of their getting the B. R. T. into the City, they undertook to build more railroads than will have been necessitated for many years to go back, and if they did that as a psychological measure, they had the right to build bridges or parks. Men, of course,—the taxpayers are going to stand for it or we would go broke. Now, I have always argued in that brief, and I firmly believe that the busses will not be needed. I now meet the suggestion of Counsellor Moss that we don't argue any at all on the rank of the policy when we should. They shouldn't put these busses on all over them, busses in streets, in the center of the City, they will not be needed when the subways are open and running, because there will be seats for every passenger excepting very brief times of every day in all of these subways.

If we are carrying a million in this present subway, that many will be scattered around in all the other subways and there will be room for everybody.

Mr. Moss.—Don't you think a system of crosstown busses not limited to a contract, would be able to cross town catcorners, would be a very great thing for New York City.

Mr. Quackenbush.—In some places. I can be perfectly frank about it, in some places, they need them, but in very few. If you take a railroad map of Manhattan Island, you will see how many railroads there are on it. There is very little use for Brother Willcox' bus scheme.

Mr. Moss.—I think that is the truth, Mr. Chairman, if the philosophy, Mr. Chairman, of the history that we have been developing for a while is, that if you start with a good offer for the City, it may be reduced. If you offer them a worse one, it may be sniffed at. If you offer them a wore one still, it may be discount regarded, if you offer them a very bad one, there is a chance it will be taken, and it seems to me that is about the way it has been developed by the history produced by the Directors.

Senator Thompson.—So far as we are able to see without any sociological discussion.



Mr. Quackenbush.— Well, I heard a lot of that, that is none of mine.

Mr. Moss.— Some of these sociological gentlemen flopped two or three times.

Mr. Quackenbush.— I think so. No doubt about it.

Mr. Moss.— What argument induced these sociological gentlemen to flop? That is the thing we want to find out now. One of these gentlemen went down to the office of the New York newspaper, the Journal, or the American and anchored himself by a letter which was published, but that letter didn't hold him sufficiently, he dragged his anchor and eventually landed over with the Interborough folks. Now, that is what I want you to tell me about, Mr. Sullivan, how you did it. A. I would be glad to if I could.

Mr. Moss.— Well, now, there are some more mighty interesting figures in this little brief, and so far as we can help to immortalize Mr. Quackenbush's deliverance I want to do it.

"It should further be bore in mind that the City must probably carry its investment in the dual system for at least eight years before getting any return — here is where I ask you to listen — indeed according to present conditions, it would be much longer than eight years. In the meantime, the cost to the City of the investment will be increasing or accumulating year by year. The estimate of the competent auditor and the City's own experts can readily verify or correct these figures — puts the City's total cumulative investment in the new dual system at the end of only eight years, approximately the following figures: A, for interest on City's rapid transit bonds be paid by annual taxes \$221,800,000. B, for interest on City's rapid transit bonds be capitalized and paid by bond issues, \$228,800,000. C, if to the latter be added an amortization or sinking-fund of one per cent., \$244,600,000" — that is on an eight year basis.

Now, this seems to me to be something entirely new, that is important what I have just read, but listen to this: "From the supplemental report of this board's special committee on pending transit proposals dated May 22, 1912, it appears and we under-

stand this is not now disputed — that it was then stated — that is, while this proposition was under discussion — it was then stated by the representatives of this board that the City could safely rely upon the assumption that the percentages of past increase in passenger traffic during the years 1901 to 1911 would continue, and that it would be a conservative view to take the annual increase at five and a half per cent. during the decade to come — that is, from 1912 to 1922. The tables in evidence showing actual results for the three years 1913 to 1915, inclusive, demonstrate that the rate of increase of passengers estimated and relied on in 1912, 1913, has not been realized. And that instead of an average annual increase of five and a half per cent., the actual average increase has been only two and a half per cent. Surely, these figures may give cause for reflection, whether the figures of 1912 can still safely be relied on, and whether it would not be the extreme of improvidence, if not of financial recklessness for the City to introduce now a competition with its own dual system which competition is likely to diminish the only source from which the City can have to secure any returns upon its enormous present investment of \$171,000,000 which will probably be increased to at least \$221,800,000 before the City can begin to recuperate.

And I stop there, Mr. Chairman, to remind you that evidence which is coming into the hands of the Committee — has come into the hands of the Committee indicates that those original estimates of \$171,000,000 are going to be ceded the Mayor of the City has already stated that to be a fact, and I think that we have evidence now that it is going to be ceded by at least \$25,000,000 and probably more.

“As to the elevated lines, the City and the Interborough entered into an agreement for sharing net profits substantially similar to that going to the subways. The Interborough is entitled thereunder as against the net earnings of the elevated system to a minimum preferential or prior lien of \$1,547,351, plus interest and plus amortization at six per cent. on \$27,000,000 or \$1,620,000, making a total of \$3,167,351, for the elevated which is to be cumulative and the deficits on which are to carry compound interest. It is of vital importance to appreciate that

the City's calculations based as they were on an increase of passengers of at least five and a half per cent. per annum which it is apparently not been realized as a sum that the cumulative deficiency account in favor of the Interborough against the city could not even on that basis be wiped out before 1923. And it is now evident that a revision of the estimate is necessary by reason of the changed conditions and comparative growth of the city in population, and corresponding increase of traffic, and that revision would put the data off at least five years — that is, 1928.

No reasonable, prudent business man would for a moment proceed upon the basis that the growth of the city in population and traffic during the next decade will equal the growth during the decade of 1901 to 1910. With the subways showing an increase of only one and for-tenths per cent. in 1915, and the elevated lines showing 5,000,000 less passengers in 1915 than in 1913 and 9,000,000 less passengers than in 1914, indicating a substantial cessation of growth, is it prudent for the city to proceed deliberately to diminish the earning capacity of the subway and elevated lines, particularly in the face of the demonstration that as a matter of fact there is no congestion that was not contemplated by every one in 1912, 1913 and no abnormal or unexpected increase.

Mr. Moss.— Now, I want to quote a few principles from the brief written by John M. Bowers on behalf of the Third Avenue Railway System. He is referring to the obligations of the city and says it matters little whether these obligations are one hundred and seventy millions or two hundred and twenty millions. They are there, and if the city is to get any return on them everyone knows it must be years hence. If the city is to continue and also to pay the interest on the bonds that have been issued, that is to continue at our time or for an indefinite period and we are to be deprived of any earnings from them, there is nothing to be looked forward to but a very heavy taxation rate in this city. It also must be heavy because the city carries not only its own people but also cares for masses of people who come from all sections of the world.

A little further he says, " I think the Borough of Manhattan has suffered more than the other Boroughs and that if there is to be a speculation of any kind in the new business activity in the issue of

new franchises for the operation of new ways to please a section of the public, it ought to be applied somewhere else than in the Borough of Manhattan."

There are other potent suggestions in these briefs and Mr. Schuster suggests that we pick out those that seem most available and put them in as Exhibits.

Senator Thompson.— All right.

Mr. Moss.— I have read all that I —

Senator Thompson.— I assume first I didn't know that Mr. Sullivan had had particular charge of this cab service, this bus service.

Mr. Sullivan.— I haven't particular charge of anything, Mr. Thompson.

Mr. Moss.— No, I simply had this material and I asked Mr. Sullivan if he knew anything about it. And while he was on the stand as a director was ready to answer me back if I didn't do what was right. Well now, Mr. Sullivan, just two or three questions. You remember the Stevens contract for third-tracking or the Stevens proposition? A. I remember a discussion of the Stevens proposed contract, a paper in toward a contract. You can call it a contract.

Q. Did you know Mr. Stevens? A. I did not.

Q. Who brought his name before the board? A. Mr. Shonts.

Q. What did Mr. Shonts say about it? A. Well, when Mr. Shonts called the meeting he said he was going to Europe as I recollect it. He said these contracts would come up when he was away and he spoke very highly of Mr. Stevens and had an outline of a proposed contract with Mr. Stevens.

Q. Well, he had an outline, that is, it was a contract that lacked only two things, the percentage to be written in and the signatures to be made. A. It wasn't a contract, that is completely.

Q. Well, that is all it needed to complete it. A. Practically, yes. But it was a proposition to be submitted and had to come before the board.

Q. What percentages were talked of? A. Anywhere from five to twenty.

Q. Five to twenty? A. Yes, as I recollect it. It may have been less. It was just a general discussion.

Q. Well, in the discussion what was Stevens to do? A. The contract as I recall it, or rather the proposed contract, I would modify that, was that Stevens was to have complete charge of the work.

Q. Had he any plant? A. No.

Q. Who was to do the work? A. He was to get an organization and get a plant.

Q. Well, wasn't he to use your own organization? A. No, only in so far as our organization was to be used to supervise, that is, our organization couldn't be spared.

Q. Was he to get a percentage on what he expended to get an organization together? A. I so understood.

Q. Was there any opposition to this contract in the meeting? A. Why it wasn't acceptable.

Q. What was the objection to it? A. Just on general principles.

Q. Largely on account of plant organization? A. Mainly on that account.

Q. That is because he hadn't the plant? A. Because he didn't have it.

Q. Because he didn't have a plant? A. He didn't have it and he didn't have an organization.

Q. Was that the ground of the objection? A. It looked to me as if it was.

Q. Wasn't the ground of the objection that the percentage was high? A. No, not necessarily, they talked —

Q. Now, I don't mean about the necessarily — wasn't it so? A. There was no percentage named, Mr. Moss.

Q. You said it was talked of from five to twenty. A. Five to twenty, yes. It wasn't definitely stated.

Q. Wasn't the minimum stated? A. Not that I recall.

Q. Wasn't it generally understood that it was to be ten per cent? A. That is the average I believe in those contracts, as a rule the base.

Q. Well, didn't it get down so that it was understood so that was about what was proposed? A. There was no understanding Mr. Moss, in regard to that.

Q. Didn't you assume that the discussion intended it was to be about ten per cent.? A. I can't say that I assumed that any percentage was decided upon.

Senator Thompson.— You said, Mr. Sullivan, “those sort of contracts,” can you cite me another contract like that? A. Well, when I say that I mean railroad contracts. I had in mind —

Senator Thompson.— I mean a contract like that. A. Ten per cent?

Senator Thompson.— No, a contract like that contract. Do you know of one? A. Yes. I let one in Connecticut myself.

Senator Thompson.— Will you just let us have a copy of the contract for comparison? A. All right.

Mr. Moss.— How much was involved? A. About two million dollars.

Q. How much was involved in this? A. Well, I would have to refresh my memory. Quite a number of millions, about twenty millions.

Q. About twenty millions. Ten per cent. would have been two million dollars. Weren't the men on the board objecting to spending approximately three million dollars on the Stevens plant? A. Thirty million it was.

Q. Yes, that would have been three million dollars. Weren't the members of your board that objected doing so because of spending so much money for practically supervision? A. Yes, it wasn't agreed to by any means. It wasn't only one you know, there were several members.

Q. How many? A. Oh, I —

Q. Who did oppose it? A. I was one of them.

Q. You opposed it? A. Yes.

Q. Why did you oppose it? A. Because I didn't think it ought to be let on that general principle to a man without a plant or organization.

Q. Then you never agreed to it? A. No.

Q. Who else opposed it? A. Well, I think Mr. Freedman was one that objected to it. He sat along side of me and I know he did on the ground of plant.

Q. On the ground of absence of plant? A. What?

Q. On the ground of absence of plant? A. Absence of plant, yes.

Q. Well, did Mr. Freedman ever agree to it? A. Never that I know of.

Q. Did anyone else oppose it? A. Yes.

Q. Who else? A. Mr. Read, Mr. Lane and I think, Mr. Berwind.

Q. You think Mr. Berwind opposed it. A. Well, I won't say that he opposed it, but he never agreed to it.

Q. I understand that it never was put over. There was a big objection made to it wasn't there in the newspapers? A. Well, that I won't say.

Q. Don't you remember? A. Yes, I think there was some talk somewhere, I don't remember where.

Q. Didn't the Comptroller, Didn't Mr. McAneny object to it and weren't articles published over Mr. McAneny's name, citing him as opposing that contract upon the ground that it might cover graft? A. I don't remember seeing them if there were.

Q. How did you dispose of that contract or that proposition? A. I think we referred it to a committee and it died in the committee. We broke it up and put it out for several bids.

Q. Well, it died in the committee because it was attacked by City officials in board meetings and their speeches and the opposition was published in the newspapers. A. Oh, no.

Q. Great attention was drawn to it. A. No, it didn't die in the Committee on that account, Mr. Moss.

Q. Wasn't it practically proposed to the Board of Estimate? A. I think not —

Q. To the Public Service Commissioner? A. I think a copy of the outline had been sent up to the Public Service Commissioner.

Q. Why was that done? A. Mr. Shonts did that and told us he had sent it up there.

Q. If everybody was opposed to it why was a copy of it sent to the Public Service Commissioner? A. It was sent before it was submitted to the board. It was merely an outline to be brought up.

Q. Why it was a copy of the same contract that was proposed to the board and there it is printed in the book, a full contract, every

phase of it covered, pages and pages of it, places for signatures and blanks for the Notary to sign. Everything prepared. A. There are many papers that are drawn up, Mr. Moss, tha are never executed.

Q. To be sure but they are never drawn up until they have been formulated.

Senator Thompson — Well, they must have same features specified if they are sent to the Public Service Commissioner. The Public Service Commissioner isn't expected to approve just an empty form. A. As I understood it, Mr. Shonts had had this prepared and submitted to the board and he thought it was —

Q. Well, how did Mr. Shonts dare to do a thing like that against such men as you and Friedman and Berwind? A. Against us?

Q. Yes. A. He didn't do it afterwards.

Q. What authority? A. I told you Mr. Shonts was going to Europe and that —

Q. I know, but what authority had Mr. Shonts to prepare those contracts and submit one to the Public Service Commissioner at the same time you say that it was submitted to your board? A. It was merely an outline of a form of contract as to whether we would agree to it or not.

Q. It was submitted to the board to find out whether it would agree to it? A. Yes.

Q. And Mr. McAneny reported to the board that while there was a blank in it for the percentage it was the understanding that that was to be filled in with ten. How did Mr. McAneny get that fact? A. To what board?

Q. The Public Service Board. A. I don't know how he got the percentage. Naturally I never gave it to him. I don't know how he got that percentage.

Q. Here was a matter so carefully considered as to have a contract formally drawn, fully considered, requiring nothing to be done except to write in the percentage and have the parties sign and the Notaries affix their signatures to the blanks all provided for them and the action of the Public Service Commissioner is invoked at the same time that the action of your board is invoked. You say that Mr. Shonts did that entirely without authority? A.



Well, I don't see that until that percentage was agreed upon, it was a general outline of a form of contract.

Q. No general outline about it. A. Why it was.

Q. It is complete. Absolutely filled out. Look it it. A. It isn't complete until the signatures are there and the percentage is agreed upon, until that, a form.

Q. You call it an outline, I call it a complete — A. Until that form is completed it isn't a completed contract. It might have been a form, it might have been modified.

Q. You and I are simply chopping words. We agree it isn't a completed contract until it is signed but it is more than an outline, it is a proposition. A. Why is it a proposition?

Q. Now, yesterday you found that you were being attacked, publicly attacked in the newspapers because of an improvident contract as it was charged, that was being put over and you say that Mr. Shonts did it without consultation and that you objected? A. Practically all members of the board objected.

Q. Now listen, did you call Brother Shonts to account for having done that? A. I said that that form of contract was absolutely put out of business long before there was any objection from any board of estimate or anybody else.

Q. Why wasn't it withdrawn from the Board of Estimate — from the Public Service Commission? A. That I can't answer.

Q. What right had it to go there without the sanction of you gentlemen? A. Why it had a perfect right, as those papers have to go up there from time to time to see whether they would meet with approval at the same time they were submitted to us. They might have suggested changes, Mr. Moss..

Q. Did your board reprove Mr. Shonts for having done such a thing and got you into the public prints over this proposition? A. No.

Q. You didn't think of reproving him did you? A. No. I don't think he had done anything to be reproved for.

Q. You didn't think he had done anything to be reproved for in submitting to the Public Service Commissioner for its approval a document that hadn't been authorized by the board or the Executive Committee or anybody? A. It wasn't submitted for approval. It was submitted to see whether form of contract would be one which would be acceptable to the Public Service Commissioner.

Q. How do you know that? A. I have been told so.

Q. By whom? A. By Mr. Shonts.

Q. But did you call him to account for it? A. No.

Q. Did you call him to explain it? A. No.

Q. Did you ask him why he did it? A. No.

Q. How did he come to tell you that? A. We had been discussing it in general.

Q. When did he tell you that? A. In his office.

Senator Thompson.—The testimony before this committee is that the meeting of your company Board of Directors was on the 24th of June. A. I believe that was the date, I don't know.

Senator Thompson.—And it was taken up again the next day by the Executive Board and that is the last the Board of Directors of the Interborough had anything to do with it. It is also the testimony before this committee, the testimony of Commissioner Maltbie, that it didn't come before the Public Service Commission until in July. Whereupon the Chairman and the other members of the Committee announced it. They were ready to vote for it and were going to approve it. A. You mean this form didn't come before July?

Senator Thompson.—Yes, and that members of the Public Service Commission announced it, according to the testimony of Mr. Maltbie, and that they were going to approve the contract that day.

Mr. Schuster.—That was a form of application signed by Mr. Shonts as President of the company.

Senator Thompson.—The application ended under date of the 24th of June but the action was in July.

Mr. Quachenbush.—Well, Mr. Chairman, if you want a fact stated that probably is not within the knowledge of Mr. Sullivan, but bearing on your examining, the draft of the contract was submitted to the law department of the Public Service Commission in the last part of May or the early part of June.

Senator Thompson.—Yes, that is the application was made before the fourth of June but the Public Service Commission proceeded to take action for the first time in July.

Mr. Quackenbush.— Well, that may be about the question of acting on the application.

Mr. Sullivan.— I don't know about that.

Mr. Quackenbush.— But the draft of the contract was examined by their law department before it was submitted to the Board on the 24th day of June.

Mr. Moss.— Well, that leads to this question — if this matter got to your attention at the meeting in June and you found yourself and Berwind and the other gentlemen that you have mentioned opposed to it and the board generally opposed to it, why did you allow it to continue in the Public Service Commission? Why did you allow it to reach the point where members of the Public Service Board were ready to vote for it? A. That I can't answer.

Q. Why wasn't it withdrawn? A. That I can't answer probably.

Q. Didn't you find out in the meeting that a copy of it was up there at the Public Service Commission? A. I don't recall whether I did at that meeting or whether I did later. I heard it, when, I can't recall.

Mr. Quackenbush.— Now, I had a misunderstanding with Mr. Moss yesterday and I trust you won't have one again for my purpose is not to create any confusion or to —

Mr. Moss.— Well, the witness is answering the inquiry. Your interruption yesterday was before the witness answered and that is why I objected to it. After the witness has answered you can say anything you like. You can't turn my stomach.

Mr. Quackenbush.— I trust that nothing that I would do would ever turn your stomach, Mr. Moss.

Senator Thompson.— I am glad to see so much harmony existing today.

Mr. Moss.— I thought he might turn the witness' stomach yesterday. I think he did too.

Mr. Sullivan.— I think you are mistaken.

Mr. Quackenbush.— What I was going to say, Senator, was this, in the interest of accuracy and that is what I thought after your statement the proposed action of the Public Service Commission which you referred to in July, was upon the application. The application was for a resolution by the Commission waiving their right in respect to the contract not for the approval of the specific contract as I recollect it.

Senator Thompson.— Yes, to approve this contract, according to our testimony.

Mr. Quackenbush.— Well, that is a mistake.

Senator Thompson.— It is the testimony of Maltbie before the Commission.

Mr. Quackenbush.— That must be a mistake because the application didn't accompany any contract.

Senator Thompson.— No, the contract came after the application was made. I don't know when the application was made or how the letter was signed but application was made then and a request was made for the contract by the Law Department. That was complied with and then that contract was submitted to the board of directors and the board of directors blew up on it and still persisted, the Public Service Commission at least, persisted in attempting to approve it. After this board of directors' meeting in July.

Mr. Quackenbush.— Well, I don't want to have any controversy on any question of that —

Senator Thompson.— It did persist in that attempt until Maltbie made a public declaration on the subject and Mr. Nash and then he made a public declaration on the subject, afterwards appears to have dropped it.

Mr. Quackenbush.— What I wanted to point out only was this: I don't know what they were about to do that you referred to, but what they were asked to do was not to approve a contract but to authorize the Interborough to go ahead on the general plan of making a percentage contract. The point that I want to get to you

and the counsellor is that they left the determination of the contract to the judgment of the Interborough.

Senator Thompson.— I don't quite agree with you.

Mr. Quackenbush.— Well then, there must have been some misunderstanding about that. I won't pursue that any further because I may be wrong.

Mr. Moss.— Yes. Well now, it is perfectly clear from your testimony that your objection was upon the ground that such a contract should not be made with a man who hadn't the plant. You didn't believe it was right to pay for his plant and give him a percentage upon the cost of the plant. Do you know whether anybody was consulted by Mr. Shonts before that contract was proposed to your board? Any members of your board? A. No, I do not. I have no knowledge on the subject.

Q. Well, you heard of nothing? A. No.

Q. So far as you know, it was Mr. Shonts' own proposition? A. So far as I know, it was.

Q. And proposed because Mr. Shonts knew this man and believed he'd make a good contractor? A. Yes, as I understood it.

Q. Good superintendents at least. A. He paid some very high compliments to Mr. Stevens.

Q. Yes. Well they'd known each other a good while and worked together? A. Worked in Panama, I believe.

Q. Panama. Up to that time Mr. Stevens had not done anything at all for the Company had he? A. Not to my knowledge,

Mr. Moss.

Q. Practically was unknown to the company? A. Other than Mr. Stevens was a man of considerable reputation.

Q. Yes. Well now, what about Gillespie, who was the next contractor that came in sight. Was Mr. Gillespie known to members of the board? A. He wasn't known to me personally, Mr. Moss.

Q. Do you know whether Mr. Gillespie was acquainted with other members of the board? A. I do not.

Q. Haven't you learned in conversation with them that they knew of him? A. He is a very well known man. I suppose that

Mr. Shonts had known him and others had known him possibly. He is a pretty well known man and contractor. I never made inquiry, Mr. Moss.

Q. Did you know whether he was acquainted with the financial backer of your company in the subway business, I mean the Morgan house? A. No, I don't know.

Q. Did you know whether he had any places in common with them? A. I did not know.

Q. Did you know whether he had interests in common with other directors? A. I did not know it.

Q. Did you know whether Mr. Friedman was very well acquainted with him? A. I did not know anything about it.

Q. Do you know anything about the Gun Hill Company? A. No, what is it?

Q. Well, the Gun Hill Company is a realty company that bought some property up on the Gun Hill Road in the neighborhood of a station that was about to be erected on the White Plains extension of the railroad. A. Never heard of it.

Q. You weren't in on the participation in that company? A. No, I had no interest in it at all. I never heard of it before.

Q. Well, Mr. Gillespie was a stockholder and it appears from the reports recently produced to the committee to be still a stockholder in the Gun Hill Company and Mr. Hedley — you know Mr. Hedley? A. Yes.

Q. Well, Mr. Hedley is President of The Gun Hill Company? A. Was that testified to here? I didn't read his testimony.

Q. Do you know Mr. Pizzini? A. No.

Q. Mr. Hedley is vice president of The Gun Hill Company, Mr. Pizzini is president, and Mr. Pizzini is also vice president of Mr. Hedley's railway improvement company.

Q. (By Mr. Moss.) Which all seems to have its inventions to the Interborough Company? A. Yes.

Q. And here is Mr. Andrew Freedman's check to Frank Hedley for \$2,500, which is marked on the outside, "Participation in Gun Hill." "Participation in the Gun Hill and White Plains Avenue." Of course, that check indicates that Mr. Freedman was paying Frank Hedley, the Vice-president of the Gun Hill Realty Company for twenty shares. That is what it is some shares, participation in this Gun Hill Company? A. I see it is dated 1910.

Q. 1910, which was a land company buying or owning real estate in the neighborhood of a coming station on White Plains Avenue. A. November, 1910.

Q. November 7, 1910, now this doesn't in any way refresh your recollection as to whether you had ever heard of close relations between Mr. Gillespie and members of the Board of the Interborough Company? A. No.

Q. Well, Mr. Gillespie's contract for this third-tracking was on a fifteen per cent. basis? A. Yes, was for a less amount, was for a very hazardous work, as I understand it.

Q. Yes, it was a lesser amount, but — A. Very hazardous work.

Q. Did you notice that his bid was only a quarter of a per cent. less than the man above him who was only a half per cent. less than the man above him? A. I didn't catch that, pardon me.

Q. Well, did you notice that there were only differences of a fraction of one per cent. between Mr. Gillespie's bid and the bid of Terry & Tench, and the bid of Snare & Triest? A. Well, I don't know that I noticed it at that particular time, Mr. Gillespie was the lowest bidder?

Q. I know he was the lowest bidder, but those three gentlemen had somehow or other succeeded actually in coming within a fraction of a per cent. of each others figures, and then they were quite some distance below the next three above them. Now, then you proceed to allow these gentlemen to get together and the result of it was that Terry & Tench took the greater part of the contract at a profit which he has testified amounted to about four and a half per cent. A. Everything went, well, it was all right.

Q. Oh, it all went well. A. It all went well if they had had an accident, it might have been a different story, you know.

Q. But Terry & Tench did the iron work. Did you ever find out that Gillespie went up on top there and watched that iron work being put up or did anything whatever to safeguard those trains that were running on the iron works that Terry & Tench were building? A. Did I ever have personally —

Q. Did you have — A. No.

Q. Why don't you know that Terry & Tench were the fellows as between Terry & Tench and Gillespie and Snare & Triest, that

Terry & Tench were the fellows who managed the erection of the iron work in such a way that your trains were interfered with and I say iron, I mean steel? A. You mean steel?

Q. I was just a little bit bashful about stating it, that was all. Why, Mr. Sullivan, after having had an experience with a man who had no plant, you took Gillespie who had no plant for the erection of steel work? A. No, he was considered. The way it was reported to us.

Q. I know, but he only handled a million dollars' worth in the whole contract, himself. You took a man who had no plant who had — A. Gillespie has no organization.

Q. Well, he had no organization for that work. He did not — he did the foundation work, and let the iron and steel work out to Terry & Tench. They took the burden of putting the steel work up, while the trains were running over it. Terry & Tench were glad to do it at four and a half per cent. profit and with that experience of the Gillespie contract, fresh in your minds, you made that contract with Gillespie and let him get away with fifteen per cent? A. We did the best we could, I think.

Q. Was it the best you could do? A. I think so, yes.

Q. Did you make a public letting? A. I think it was a private letting.

Q. It was a private letting. You selected six people? A. Yes.

Q. And those six people — A. And it was a very hazardous work.

Q. I know it was, and the majority of those six people were practically associated together, contracting firms with close associations. A. Well, that was not to my knowledge.

Q. Did you invite the Boston concern in that Mr. Reid had some concern about? A. That Mr. Head had. What firm was that?

Q. Yes, what was the name of that Boston —

Mr. Quackenbush.— Mr. Lane.

Q. Did you invite them? A. I don't suppose that they did, I can't answer the question. I don't know.

Q. I wonder — do you know why they were not invited? A. I do not.

Q. Do you know anything about that organization, their experi-



ence, their success? A. Stone & Webster, oh, they had quite a reputation, yes.

Q. Sure, why weren't they invited, too? A. They are very able people, but they largely operate up in New England section.

Q. And you take those six concerns that you selected and put them all together. You don't begin to have mentioned the biggest firms in New York City, did you? A. Of course, largely, Mr. Moss, I think that we listened to the operating department, I think —

Q. You listened to Mr. Shonts, didn't you? A. Listened to Mr. Shonts and the operating department.

Q. Mr. Hedley? A. I think Mr. Hedley, probably.

Q. Well, Mr. Hedley was president, vice-president of the Gun Hill Company in which Mr. Gillespie is even now, a participant and a good thing on the White Plains road you see. A. I don't see anything wrong about it.

Q. Well, I am enlightening you then. A. I can't quite see the enlightenment that you put.

Q. Why did you restrict the offer to companies that were named? A. I can't answer that.

Q. When there are so many excellent companies in New York that could have done the work just as well as any of them could have done it. A. I have no doubt that our people picked out what they thought were the very best people to do that work.

Q. Did you take any interest in the matter? A. I voted on it.

Q. You opposed the Stevens matter, because it hadn't a plant. A. Yes.

Q. Did you take any interest in this Gillespie business? A. I took interest enough to make inquiries as to whether they were the very best people or not.

Q. Weell, were they the very best people? A. I was so informed.

Q. Upon what basis? A. It was reported to me that they were a very safe sound people.

Q. Very safe sound people for what? A. For construction work of that kind.

Q. What kind of construction work? A. Remember that was third-tracking.

Q. Steel? Of course, it was third-tracking. Had they ever done any third-tracking? A. Well, I can't answer that.

Q. Had they done any building? A. Oh, yes, I think.

When train were in operation? A. They had done sub-structure work which was a necessary thing in connection with that?

Q. Yes. That was the main part of this, the substructure?

Q. Yes. A. You don't let that elevated track down in the street.

Q. Well, do you know what they did over in Brooklyn with ordinary contractors, do you know that? Did you ever see what they did over there in Brooklyn? A. Who?

Q. I am not throwing bouquets at the B. R. T., but I say that they reconstructed an old ramshackle railroad there, practically rebuilt it with trains running without any such fussing.

Senator Thompson.—Well, let us see about that sub-structure. You think the most important part of the work was the digging of the holes in the ground that Gillespie did for—A. I think the holding up that elevated structure—yes, Mr. Thompson, I think—

Senator Thompson.—Well, as I understand Gillespie's operations were confined to digging the holes and placing it. A. What his actual operations were confined to I can't tell you.

Senator Thompson.—Well, I assume that is so. I assume that you owe this board—Mr. Shonts was the president of the Board—and you had confidence in him. A. I had a great deal of confidence, I still have.

Senator Thompson.—And what he suggested, you were quite liable to coincide with. Now, that is the way I take it from what you have testified. A. Yes.

Senator Thompson.—I assume that is true. Now, in relation to this matter I just was asking you if you understood that the building of the foundations in the street that Gillespie did, if you regard that as a more important part of the contract? A.

Why, I should say that the guarding of that structure, Mr. Thompson, through the foundation and through the proper holding up of the structure while it was being under construction, in the changing of the vents, etc., was probably the most important part.

Senator Thompson.—Well, as I understand that goes a little farther than Gillespie went.

Well, he was in charge, he was responsible for it. He sublet —

Q. (By Mr. Moss.) Do you mean—

Senator Thompson.—There is a question about—A. He gave bonds.

Q. (By Mr. Moss.) Do you mean to say that Mr. Gillespie built foundation work under the elevated railroad while it was running before this? A. Well, that I can't answer.

Q. Well, I guess you won't. A. What?

Q. I don't think you can. A. I can't answer that. I was told he was a very wonderful man.

Q. You were told he was a very good man, and no doubt he was a very good man, and a very good man for all that was expected of him, but that ain't answering the question of how he was an expert, such as to put him over the heads of a large number of strong concerns in New York that were not invited to bid at all. Did you ever talk with Mr. Freedman about Gillespie? A. Not specifically.

Q. Did he ever mention him to you? A. No, only in the board Mr. Gillespie was recommended.

Q. Did you ever talk with Mr. Hedley about Mr. Gillespie? A. No.

Q. Never? A. No, never other than coming down in the subway the other day. I talked with Mr. Hedley since this time.

Q. About Mr. Gillespie? A. Yes.

Q. Did he say he knew him? A. He considered he was a very able man.

Q. Oh, yes, he considered he was very able. A. Only on general principles, I talked with him.

Q. Mr. Gillespie is very able for some things, for instance

in pipe. A great man on pipe, he has a lot of contract work which I said was not "political" around the aqueduct.

Senator Thompson—Laying pipes that were not political, is that what you mean ?

Mr. Moss.—Sure. But there was about those a certain what was it ? A long bar about his pipes that was different from other pipes. Well, did you pretty generally, Mr. Sullivan, take the advice of Mr. Shonts ? A. I thought—I hold a great deal of confidence in Mr. Shonts.

Q. Well you generally followed his advice ? A. Yes.

Q. And when Mr. Shonts told you that Gillespie was a good contractor you thought that was the more easy form. A. Absolutely.

Q. Still you didn't take his advice to Stevens ? A. Well, I didn't agree with that.

Q. Well, why did you separate from Shonts to Stevens ? A. Because I felt that Stevens was a man who really had no organization. That was how that was—the entire reason.

Q. Well, wasn't it really in addition to that there was a sort of scandal growing ? A. No.

Q. Why at the very time when you say that Shonts—that Stevens had no plant wasn't he doing a contract in the Bronx ? A. He was doing a subway contract.

Q. The subway contract, yes. A. Yes, but he hadn't anything to do with this sort of work.

Q. No. Well, have you understood that when Mr. Gillespie succeeded under the suggestions of Mr. Shonts in dividing the responsibility of this contract up, so that most of the work was done which Snare & Triest and Terry & Tench, that he took at the outset, five per cent, and then divided the profit on the balance with the other contractor. A. No, I can't say that I recall.

Q. Did you never know that ? A. Not that I recall that detail of it, no.

Q. Well, that is the detail which has come out of the evidence that upon the bald proposition of superintendence, you took

Q. Certainly, but those are the sub-contracts. Those are the five per cent, and then the ten per cent, that remained he divided

with Terry & Tench who had the major part of the doing of the rest of the contract, and even divided up a proportion of his profit upon his own foundation contract of a million dollars. It is evident isn't it Mr. Sullivan, that there was a lot of easy money in that contract for Mr. Gillespie ? Isn't it evident to you. A. No.

Q. When he could get a contractor to do the major part of that work for a profit of four and a half per cent., and glad to get it as good a concern as Terry & Tench ? A. Very frequently sub-contractors are let after a main contract has been let at a higher price. The sub-contract is taken at a low one.

sub-contracts. A. They are working just the same contract.

Q. No, the tail wagged the dog here. A. We made a direct contract.

Q. These sub-contractors took the major part of the contract and left the contractor who had the bid in his hand with just a fragment of the tail between his finger and his thumb. He had about a million dollars worth of the eleven million dollars, and the man who really did the responsible work was satisfied with the profit of four and a half per cent.

Now, I want to ask you this, Mr. Sullivan, were you gentlemen careless or indifferent as to the amount that Mr. Gillespie would make out of this contract because he eventually would be charged up under the dual contract system and the city of New York. A. That is the first time the idea has ever come into my head Mr. Moss. You have put it there.

Q. Well, did you give that matter as much attention as you would have given it if the city of New York was not the unfortunate partner in the dual subway enterprise ? A. Why, I think so.

Q. Just as much ? A. Yes, I feel so.

Q. Well, when you gave Mr. Rogers an extra compensation of fifty thousand dollars it was talked of in the board wasn't it that that would eventually be charged up to construction ? A. I don't suppose it is chargeable to anything else. It might be chargeable to surplus.

Q. You understood it would be chargeable to construction ? A. Part of the cost.

Q. What salary was Mr. Rogers getting at the time, what was it ? A. Thirty thousand, wasn't it ?

Q. Thirty thousand, something like that. And wha twas Mr. Shonts getting at the time that you gave him one hundred and fifty, and you were willing to give him two hundred and fifty. What was his salary? A. I think one hundred thousand.

Q. Now, weren't you gentlemen just throwing around these good things out of other people's money — careless? A. I don't think so.

Q. Do you know whether or not at or around that time any members of your board were interested together with Mr. Shonts in any stock accounts? A. I do not.

Q. You never inquired of that? A. Never did.

Q. Never got any information on it. A. Never inquired into the personal business of any member of the Board.

Q. May I ask if you personally had been in any pool arrangement with Mr. Shonts or with Mr. Haley or with Mr. Freedman? A. Personally, I have not.

Q. Or the interests that you represent? A. No.

Q. Did you inquire into the five hundred thousand dollars that was paid to Morgan & Company? A. Inquired into it in what way?

Q. As to the propriety of the expenditure and what it was for, what services they had rendered? A. Why, it was really paid to them to hold that money for us, one hundred million dollars of pledge. It was practically one-half of one per cent. for holding that amount of money subject to call for a year.

Q. Where was the money? A. Well, they guaranteed to put it up?

Q. Well, where was the money? A. That I don't know.

Q. Was the segregated deposited in any account or was it — A. That I can't answer.

Q. Or was it in the accounts of the gentlemen who were to be called upon? A. That I can't answer, the agreement with Morgan & Company they were responsible.

Q. Was the money earning interest for the people that had it? A. Why, I take it it was.

Q. Surely, it was earning interest until you called for it. You don't mean to say that Morgan had that amount of money in a vault or in some account not drawing interest waiting for you? A. I shouldn't think Mr. Morgan would be that foolish.

Q. No, I shouldn't think so either. I would hardly like to ask him. A. I would hardly think so.

Q. In the meanwhile I want to ask Mr. Quackenbush if he can inform me more accurately of the destination or use of that ballast.

I quote — this is in the matter of the Upper Hudson Stone Company. A. Yes.

Q. I quote from page 209, from the report of the Comptroller who says: "The Stone was for a supply of ballast, Portion A, for use in the construction of Rapid Transit Railroads. The same to be charged against the authorization of twenty-eight million, two hundred thousand for contract No. 3"—Contract No. 3, is, of course, the Interborough Contract.

Mr. Quackenbush.—Yes, that would indicate that it was to be operated by the Interborough Company, but what I meant when he stated to you, that it was not for the Interborough, that the Interborough Company or the subsidiary, Rapid Transit Subway Construction Company, was doing the work.

Mr. Moss.—I see you meant that the contract was between the Stone Company and the Public Service Commission.

Mr. Quackenbush.—Yes, sir.

Mr. Moss.—Though the stone was actually to go into the railroad under the contracts.

Mr. Quackenbush.—Oh, no question about that, but that it wasn't a contract between the Interborough or any company which it was interested in, and the Stone Company. A. I have been so informed, too.

Mr. Moss.—As I told you this morning.

Mr. Quackenbush.—Just who the contractor was for the particular section I can't state, but I am information and have no reason to believe my information is accurate.

Mr. Moss.—And then curiously Mr. Colby asked Mr. Thompson, the unsuccessful bidder in question, page 213, "Do you happen to know whether any director of the Rapid Transit Company is a director of the Upper Hudson Stone Company. A. Not that I know of."

Mr. Quackenbush.— Well, Mr. Colby, when he asked that question knew.

Mr. Moss.— Did he know it?

Mr. Quackenbush.— Oh, yes, because Mr. Sullivan had already sent in to the Committee. A. But I don't believe I did. I believe I forgot all about the Upper Hudson Stone Company. I don't think I put it in. I had forgotten all about the Upper Hudson having any dealings. I never knew that they had any business you know.

Mr. Moss.— Now, who is the man in the Hudson Stone Company that would know about these things? A. Mr. Butler Duncan, he is the president.

Q. Is he in town here? A. I don't know.

Q. Does he live here, I mean? A. Oh yes.

Senator Lawson.— Fifth Avenue. A. Shaw, would be the man, the general manager.

Q. (By Mr. Moss.) Shaw, the general manager, where is he? A. He is here.

Q. What is his first name? A. Havemeyer Building his office is, I think. If you will get me a —

Q. Never mind. That is sufficient. We will get that.

And I would like in connection with the New York Dock Company matter to put in the record this paper which has just been furnished. A. I want to ask Vanderbilt a question if I may.

Q. Certainly. Has been furnished from the Commission on the sinking-fund. This is a report dated the blank day of November, 1915, initials C. A. O. M. which means Charles A. O'Malley, it refers to the matter that we discussed at the foot of Clarke Street, and generally approves the plan which has been spoken of as the first plan, however, it is not signed by the deputy acting comptroller, and in a sheet attached to this unsigned report in lead pencil are these words: "Mr. O'Malley, hold this report for the present. W. A. P., November 19, 1915."

W. A. P. seems to be the initial signature of the Comptroller.

And Mr. O'Malley has stated that this report was taken back and failed to become effective because of the objection that Mr. Brewer made to the proposition as was detailed by the witnesses yesterday.



Senator Lawson.— I understand that Senator Thompson wants to ask Mr. Sullivan a question.

Mr. Moss.— Yes, he so said, and Mr. Sullivan was kind enough to wait a moment to give him an opportunity to return.

After consultation between Mr. Moss and Senator Lawson participated in by Mr. Quackenbush, it was decided that Mr. Vanderbilt, who was present, would not be called to testify until the following day.

As Senator Thompson earlier in the session, before he left the meeting temporarily, thought he wished to ask a further question of Mr. Sullivan, Mr. Moss left the meeting and spoke with Senator Thompson. On his return he announced that Senator Thompson had decided not to question Mr. Sullivan further.

Mr. Sullivan leaves the stand.

The Committee decided to swear Mr. Vanderbilt in order that the testimony the following day might begin without delay.

Mr. Vanderbilt was sworn and took the stand. On reply to question by Mr. Moss, he stated that he resided on Fifth Avenue, New York City.

Mr. Vanderbilt is then excused until the following day.

Adjournment until 11 A. M., Friday June 2, 1916.

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## June 2, 1916

### MUNICIPAL BUILDING, NEW YORK CITY.

The meeting was called to order at 11:30 A. M., Senator Lawson presiding.

Testimony of HENRY R. KENT.

Cross-examination by Frank B. Moss. (Witness is sworn.)

Q. What is your business? A. Engineer.

Q. You are connected with what firm? A. Henry R. Kent & Company.

Q. Is it a contracting firm? A. Yes.

Q. Was your firm invited to bid on the third-tracking of the elevated railroad? A. Yes—rather, I was.

Q. That was before the firm was organized? A. Yes.

Q. And who invited you to bid? A. I had the regular invitation to bid that came from the Interborough Company.

Q. Did you know you were going to receive it? A. I asked for it.

Q. Who spoke to you about it before you asked for it? A. I learned about it in general and I was spoken to about it by Briggs, Baldwin & Baldwin.

Q. Was that your first information of it? A. Why no, I couldn't say that it was my first information.

Q. You have known Mr. Gillespie for sometime and before that bid was made, hadn't you? A. A long time.

Q. And you had known Mr. Cravath before that bid was made? A. Yes.

Q. I think you were connected with one of the Westinghouse Companies, weren't you? A. Yes.

Q. What Company was that? A. The Westinghouse Carbon Company.

Q. Mr. Cravath was a director in that company and counsel? A. Yes.

Q. Did you speak with Mr. Cravath before you made your bid? A. No, sir.

Q. Did you have any communication from him? A. No, sir.

Q. Did you have any conversation with or invitation from Mr. Gillespie before you made your bid? A. No sir.

Q. Did you know that he was bidding? A. I can't say that I knew he was bidding. I thought he probably would be because I know they are people who are likely to bid on that kind of work.

Q. Had you had any experience in that kind of work? A. In heavy contracting.

Q. But I mean in the erection of steel for a railroad while it is running? Not on a running road, no, sir.

Q. What railroad had done such work for? A. Well, I have been working on the electric interurban railroads for a good many years.

Q. Surface roads? A. Yes.

Q. Elevated roads? A. No, sir.

Q. Never had to handle them? A. No, sir.

Q. But you hadn't done anything upon the New York elevated roads or upon the elevated roads in any city? A. No, sir.

Q. I would like to ask you what was the amount of your bid. A. It was a percentage.

Q. What was the percentage? A. Seventeen and one-half per cent. as I remember.

Q. Did you know the amount of the bid anybody else was making? A. No.

Q. And after you had made your bid, did you hear anything about the matter? A. Only as I have seen it in the papers since.

Senator Lawson.—How did you determine this percentage basis on which you put in your bid? A. Well, that is a pretty hard matter to explain.

Senator Lawson.—Why did you fix on seventeen and one-half per cent? A. Because I that that was as little as I could afford to do it for.

Senator Lawson.—Did anybody tell you what percentages were going to be put in? A. No, sir.

Senator Lawson.—Well. you had some reason for determining on seventeen and one-half per cent., didn't you? A. Yes.

Senator Lawson.—Did you work that out from an analytical proposition? A. No, sir. I knew what work of that kind would net.

Mr. Moss.—Have you any plant? A. I have very little plant, Mr. Moss.

Q. Did you expect to sublet it? A. No, sir. I had no expectation.

Q. Did you expect to associate other concerns with you? A. A. I hadn't got that far. I expected to form an organization.

Q. Have you learned that Terry & Tench did the greater part of the work at a profit of four and one-half per cent,? A. All I know is what I read in the paper.

Q. Had you made percentage contracts before? A. Yes.

Q. For any large amounts? A. Yes.

Q. How large? A. Why, four millions.

Q. Did you make percentage contracts as low as five per cent.? A. No, sir.

Q. Ten per cent.? A. Yes.

Q. Less than ten? A. No, I think not, Mr. Moss. Not that I know of.

Q. When you made your contract at ten per cent. you expected to furnish your own plant, all of it, didn't you? A. Not all of it.

Q. You didn't expect to have it charged up as part of the expense on which you would get your ten percentage again, did you? A. Yes, sir.

Q. How much was the amount of that contract? A. Which contract?

Q. Ten per cent contract. A. There were a good many of them, Mr. Moss.

Q. Well, name the amount of one of them. A. The percentage contract doesn't have any round figures.

Q. I know, but the amount you got the percentage on. A. Contracts that we did for railroads ran from five to six hundred thousand dollars, lots of them.

Q. But the Pennsylvania was one of them? How much was that? Was the percentage on the Pennsylvania Railroad? A. Why that was—I can't tell you that. It was an involved contract and I won't tell you.

Q. Well, of course if you had to do a job for five or six hundred thousand dollars where it was necessary to get yourself ready to do it, make the plant appropriate to the work, you would have to have a fair percentage to give you a start. But when you come to a contract involving ten, eleven, fifteen million dollars, at ten per cent., it means a good deal of money. A. Yes, sir.

Q. You haven't any experience in contracts as large as that on percentage basis have you? A. Well, I don't know what the total of the Pennsylvania contract was but I was quite closely associated with all of that work.

Q. What was the percentage there? A. I can't tell you.

Q. Did you expect to get an opportunity to do this work on a seventeen and one-half per cent. basis? A. I hoped I might be able to.

Q. Did you expect that you would have to build a plant to accomplish the work? A. Not build a plant but provide a plant.

Senator Lawson.—You figured that all in your seventeen and one-half per cent.? A. No, sir.

Senator Lawson.— You didn't figure it in? A. No, sir.

Mr. Mooss.— Now, this firm of Briggs, Baldwin & Baldwin, had they been your attorneys? A. I have never had to have any attorneys, fortunately.

Q. Well, how did you come in contact with them? A. Through the Westinghouse Company.

Q. Do you know whether or not Gillespie paid fees to Griggs, Baldwin & Baldwin? A. I know nothing about it.

Q. Do you know whether or not Griggs & Baldwin were among the regular counsel of the Gillespie Company and that Gillespie paid them large sums of money? A. No, sir.

Q. Where is the office of Griggs, Baldwin & Baldwin? A. 27 Pine St.

Q. Well, I think that will do.

Senator Lowson.— Did you know any members of the firm of Griggs, Baldwin & Baldwin personally? A. Yes, I knew some of them.

Senator Lawson.— That Mr. Griggs was former Governor of New Jersey? A. Yes, sir.

Mr. Moss.— Did you talk over or have any conversation whatever with Griggs & Baldwin or any members of the concern about the percentage you were going to charge? A. I think so, yes.

Q. Now, wait a minute about that. What was that conversation? A. Why, as they brought this matter to my attention I consulted with them as to what I could profitably charge and we talked that over. I have no distinct recollection of it because it was a long time ago and the thing is past.

Q. Well, how did you talk it over? Did they ask you what you were going to charge or did you tell them what you were going to charge? A. I can't remember how the matter did come up.

Senator Lawson.— Did you initiate this proposed bid as a result of invitation or suggestion from Griggs & Baldwin? A. I think likely that it resulted in that way.

Q. You didn't know about the magnitude of the work or any of its details or did you have any idea of putting in a bid until

they suggested and talked it over with you? A. I didn't have a close knowledge of the magnitude of the work but I knew that it was very large and very important work.

Senator Lawson.—But the suggestion came from them when you talked the matter over and thereafter put in a bid of seventeen and one-half per cent? A. Yes, sir.

Mr. Moss.—Did you learn from Griggs & Baldwin that any other persons were going to offer bids? A. No, sir.

Q. Were the names of any other persons mentioned? A. No, sir.

Q. Any other contractors? A. I think not, Mr. Moss.

Q. Now, I think that will do, but you might wait just a moment, I am going to ask Mr. Gillespie some questions.

(Mr. Kent is recalled.)

Mr. Feinberg.—You were invited to make bids? A. Yes, sir.

Q. Were you furnished with plans and specifications? A. Yes, sir.

Q. Did you make a record of the figures which led you to the conclusion of asking for seventeen and one-half per cent.? A. No, sir.

Q. You never made any record at all? A. I made a record of the bid that I made.

Q. Didn't you put your engineers at work on the plans and specifications? A. I went over them myself.

Q. Did you have any assistance at all? A. No, sir.

Q. You made no record at all as to how you came to the conclusion of demanding seventeen and one-half per cent? A. It was simply a matter of judgment.

Q. They couldn't be reached in any other way? A. I don't know of any other way?

Q. The cost of operation never entered into your judgment did it? A. Why of course it would enter into the judgment.

Q. Didn't you take any advice or consult with anybody in relation to that? A. No, sir.

Q. Are you an engineer? A. Yes, sir.

Q. Did anybody ever approximate the cost of the work for you? A. No, sir.

Q. Do you know whether it would amount to eight, or nine or ten millions? A. I don't think I could say what the arrangements and cost of things was.

Q. Well, won't that enter materially into the percentage that you would ask? A. I don't think so, no sir.

Q. So that although this was important work and involved an important contract to you, you simply guessed at seventeen and one-half per cent above whatever the cost would be. Is that the impression you want to leave with me? A. It wasn't a question of guessing, it was a question of judgment as to what that kind of work was worth.

Q. Well, tell us what premises you based this conclusion, what were your mental operations? A. I have been doing percentage work almost all my life and know about what it is going to amount to. I arrived at it from experience and judgment, that is the only explanation that I can give you.

Mr. Smith.—What percentage contract did you ever have at seventeen and one-half per cent or more, running into five or six hundred thousand dollars? A. I never had one.

Q. Did you have any sum in your mind at the time that you put in this bid upon which you anticipated earning the seventeen and one-half per cent.? Any amount, one million, two millions, twenty millions? A. No, sir.

Q. Do you mean to say that as an engineer you would make no difference on a one million dollar contract and the extension of that contract to twenty millions of dollars? A. Not if the original percentage was as low as it could be profitably be done at.

Q. Well, you have had some profitable contracts? A. Yes, sir.

Q. And never as high as seventeen and one-half per cent? A. No, sir.

Q. Never one approximately as large as this one would be to your knowledge from the plant? A. Less with the possible exception of the Pennsylvania contract.

Q. The larger the contract the less the percentage necessarily. A. No, sir.

Q. Why not, when the work is of the same character through-

out practically? Well that is a different question. The responsibility of the cost of handling a contract as hazardous and important as this one would necessarily run into very heavy expense.

Q. You read the proposition did you not? A. Yes, sir.

Q. It was to be a positive percentage and there was no responsibility attached to your obligation except to get the material on the ground and put it in place. You had no account cost, you had no responsibility for loss of material. You used the word "responsibility." What does responsibility mean to you Mr. Kent? A. In connection with this particular contract, the successful completion of the contract.

Q. You do it from section to section, each section indicates its successful completion right at that point. It is either a success or a failure right there is not? A. Each section as completed could indicate that, yes.

Q. That is a complete success or a failure isn't it as it goes along? A. If I understand you.

Q. Then where does this immense responsibility covering twenty millions of dollars or ten millions of dollars come in that would require such a large percentage? What do you mean by the word "responsibility" under that particular contract? A. I can conceive of many things happening before a section was completed.

Q. There would be no financial responsibility attached to you for those things that might happen, accidents or otherwise. A. I don't know about that. There might be some.

Q. Well, if that was so, why would you require this large percentage on this large contract, a greater percentage than you have ever had in your life on a greater contract than you ever had in your life? A. It isn't a greater percentage than I ever made on a contract.

Q. I realize that, but we are talking in millions now. A. I don't get your question.

Q. Here was a contract greater in amount than any you had ever had in your life, that is true is it not? A. No, I don't know as it is.

Q. With the possible exception of the Pennsylvania. A. Yes.

Q. And here is a contract upon which you bid a percentage



greater than you ever demanded in your life on a similar contract.

A. Yes.

Q. And here is a contract absolutely without financial responsibility for accounts or otherwise, cost including accounts and all responsibilities assumed by the contractors and yet you demand seventeen and one-half per cent. A. Yes, sir.

Q. And you speak of the responsibility attached to that contract. Now, other folks have used the word "responsible" but I think that with your experience you are as capable as anybody of telling us what responsibility means in connection with that Manhattan Elevated third-tracking. What is it? What is the big responsibility? A. I can see a very tremendous responsibility.

Q. Well, tell us about it. A. In getting into an operation of that kind where accidents might happen.

Q. You are not responsible for them, the cost pays it. A. I am morally responsible for them.

Q. The cost pays them and you get your seventeen and one-half per cent. on them.

A. I am morally responsible for it if I had the contract. I didn't get it but I would be morally responsible for any accident that happened and the hazard that is taken is tremendous. I think it is a very wonderful thing that it went through without any serious accidents.

Q. And you ease your moral responsibility by increasing your financial percentage. A. If I could get it.

Q. That is the way it works out. A. Well, I don't think you should put that interpretation on it.

Q. That is a fact if you measure responsibility by the moral responsibility and offset your conscience by increasing your percentage. Is that what you mean. A. No.

Q. Well, what do you mean? A. I mean just what I say, that the responsibility in carrying on a job like that was in my judgment—I was probably wrong because I didn't get the contract—in my judgment was what I asked for and I didn't want it if I couldn't get it at that figure.

Q. It seems your moral responsibility is the same as it applies to any responsibility from a hundred dollars up to twenty millions. The moral responsibility remains the same and there is

an increased moral responsibility on a twenty million dollar contract. Do you estimate your percentage on the easing of your conscience. A. No, I don't ease my conscience.

Q. All right then, what has the seventeen and one-half percent to do with the moral responsibility? A. You say I have no financial responsibility. I think that I couldn't get away with either that or any other responsibility.

You what? A. That is the way I figure it.

Q. Figure what? A. What a job is worth.

Q. I know that is the way you figured because that is what the record shows, but there must have been some sort of mental operation, there must have been some sort of measurement or adjustment or judgment that brought you to that conclusion. Now, you finally analyzed the situation by saying that it was the responsibility. You then go further and deduct from that that it was the moral responsibility and then you refuse to accept the proposition that I concluded, that by reason of the moral responsibility you increased your percentage. Now, if you don't increase the percentage by reason of moral responsibility, what brought about this greatest percentage on the greatest contract that you ever had an opportunity to get. A. Why I tried to make it clear that I felt that that was what I ought to get for it. If I couldn't get that I didn't want it.

Q. Well, that is a fact possibly, but no reason. Now, have you some reason to accompany that fact or statement of facts. A. My reason was that thought that that was the closest figure that I could take it for and make any money.

Q. And yet you had made money for years on percentage contracts no one of which was as large as this and no one of them carries the same percentage. A. No one of which was as difficult a contract to carry out.

Q. There was no difficulty about it as far as your finances were concerned because the contract stood for all the financing. It was completed section by section practically so that if you made a failure or defect, you could correct it in the next one. The only responsibility attached to it in any way, shape or manner was your conscience by reason of the amount of traffic involved, running traffic during the time that you were working. Now, does that

bring around the seventeen and one-half percent ? A. I don't know what you are trying to get me to tell you.

Q. The truth I guess. That is my notion of it. A. Well I am trying to tell you the truth, sir.

Q. Now, I also want to know as an engineering proposition, Mr. Kent, what it was that made you charge the greatest percentage on the greatest contract that you ever had an opportunity to get. A. Why —

Q. And I don't want the moral responsibility, because we both conceded that you won't increase your percentage by reason of your conscience. We will leave that out. Now, tell us something else. A. Why, I know what it would cost me to do the work. There are a lot of things.

Q. What difference would it make. A. I couldn't charge them.

Q. What difference would it make how much it would cost ? You would get seventeen and one-half per cent. on it.

Q. I didn't so understand it.

Senator Lawson—Do you know, Mr. Kent, what you were actually bidding on ? A. I thought I did.

Senator Lawson—Well, now since this contract has come up and has been discussed before this committee, have you had any reason to change your mind materially with reference to the workings of the contract itself ? A. Affecting the cost ?

Q. Yes. A. No, I haven't.

Q. Well, you say here this morning that there were many things that you didn't understand, that you didn't know about. A. I didn't say that.

Q. You intimated that. A. I think that there would be some question as to what would be included in the contract and I bid on it the way I understood it. There were a lot of things that I couldn't charge in the contract.

Q. Do you think you thoroughly understood the specifications and the contract and everything connected with it at the time that you put in the bid and that you made the bid in entire good faith ? A. I made the bid in entire good faith and I thought that I understood what I was doing.

Senator Towner.—Did you expect to furnish for this seventeen and one-half percentage, anything except your personal services? A. Oh, yes.

Q. Beyond that, what did you expect to furnish? A. My accounting experience and the cost of my money and —

Q. Cost of your money for what? A. For carrying on the work.

Senator Lawson.—How much money did you figure you would have to use? A. Why, on a contract of that kind you would have to use a good deal of money.

Q. Do you recall what you had in mind when you made your bid? A. I don't.

Q. Can you tell us how you arrived at that percentage? Was it simply an arbitrary guess on your part that you could do the work for that and make money? A. Well, if a guess is the same as my judgment, yes.

Q. Did you make no figures, use no data on which to base your bid? A. I made my figures but I had had experience in doing that kind of work.

Mr. Moss.—When you were interested in the Pennsylvania Railroad contract, I suppose it was through your relation to the Westinghouse Company? A. Entirely so.

Q. The Westinghouse Company had the contracts. I think you were Vice President, weren't you? A. Yes, sir.

Q. Well now, did Griggs, Baldwin & Baldwin tell you how they came to know anything about the third-tracking? A. No, sir.

Q. Didn't it seem a little strange to you that the firm of Griggs, Baldwin & Baldwin should propose to you this matter of submitting a bid? A. No, it didn't seem strange to me.

Q. What had they to do with it? A. I don't know what they had to do with it.

Q. Didn't you ask them what they had to do with it? A. I didn't ask them.

Q. Did you think that they were counsel for the Interborough Company? A. No, sir. I didn't.

Q. Did you think they were interested in Gillespie? A. No, I had no knowledge of it.

Q. Did you think they had any relation whatever to this third-tracking that was to be done? A. I didn't know of any of their relations of any kind.

Q. When you saw Griggs, Baldwin & Baldwin about this matter was it accidental or was it through some arrangement, some engagement you made to call on them? A. It might be said accidentally, because I had no relations with them and I used to go there quite frequently.

Q. That is you had no business with the firm at that time. Well then, you had at that time no business dealings with Griggs, Baldwin & Baldwin and yet they proposed this to you. A. Well, I had business dealings with them in connection with other matters.

Q. Which gentleman of the firm proposed it to you? A. Mr. Arthur Baldwin.

Mr. Moss.—Do you recall what Mr. Arthur Baldwin said to you? A. No, I don't think I could recall his words.

Q. Did he speak to you on more than one occasion about it? A. I think so, yes.

Q. Then you sent to his office again and talked about it? A. Oh, I used to go in there quite frequently.

Q. You went several times in which this matter was discussed. A. It is likely I went several times, yes.

Q. Well then, it became more than casual didn't it? A. Yes, I think it was more than casual.

Q. After you had talked with Mr. Baldwin on a number of occasions did you find out what was Mr. Baldwin's interest in it? A. No, I never asked him any questions.

Q. When did you see him prior to the time you submitted the bid, how many days before or was it the same day? A. Why, I don't know. It was within the week.

Q. Within the week? A. Probably.

Q. Then you had been talking with him several weeks, hadn't you? Over a period of several weeks? A. Yes, I think so.

Q. Well, did he see your bid before you submitted it? A. No, I don't think he did.

Q. Did anyone down in that office see it? A. No, sir.

Q. Did he know what percentage you were going to bid? A. I think he did.

Q. But he didn't tell you any other percentage that anyone else was going to bid? A. No, sir.

Q. And after you failed to get it, did you see him again? A. Oh, I have seen him lots of times.

Q. Was the matter mentioned between you, your failure to get it? A. I think we talked about it.

Q. What did he say? A. I couldn't tell you. You asked me if it was mentioned. I think it was but what was said. I don't know.

Q. Didn't you understand that you were putting in a bid which would probably not succeed in getting the work? A. I didn't so understand, no sir. I didn't know whether I would get the work or not. Personally, I didn't think that I probably would get it.

Q. You had no idea really you would get it when you submitted the bid did you? A. Yes, I thought I might get it.

Q. You might, but the chances were against you? A. Yes, sir.

Q. Why? A. Because I didn't have the standing probably to secure it.

Q. You had a good Westinghouse connection? A. Yes, sir.

Q. Did you know Mr. Mellen of Pittsburg? A. I think I have met him but I don't know him.

Q. You had no business relations with him? A. No, sir.

Q. When you made your bid of seventeen and one-half percent, what did you expect to furnish beyond your personal services? A. All my accounting and bookkeeping.

Senator Towner.—In percentage, how much would that involve? A. That would depend quite a little on what was required in the way of certain requirements — probably four and one-half percent.

Mr. Moss.—Well now, suppose we let Mr. Kent rest a bit. We may not want him but he will just remain here in call for a few minutes.

Testimony of MR. T. A. GILLESPIE.

Cross-examination by Mr. Frank B. Moss:

Mr. Moss.—Did you know Griggs, Baldwin & Baldwin? A. Yes.

Q. How well did you know them? A. I have known them for a good many years. I have known Governor Griggs for twenty-five years and with the others I have done business.

Q. Do you know whether that firm ever acted as counsel to the Interborough people? A. I do not.

Q. Did your concern ever talk about this third-tracking business with any members of the firm of Griggs, Baldwin & Baldwin, you or your son or anybody? A. I think I talked to Leonard Baldwin about it and perhaps Governor Griggs but I think I talked with Leonard Baldwin.

Q. Before the bids were put in? A. About that time.

Q. Well then, they knew you were going to bid. A. I think so.

Q. Did you talk with them about the bid? A. No, not about the bid.

Q. Did they know what percentage you were going to bid? A. I have my doubts about that. I don't generally tell those things.

Q. Well, I know, but it seems that your competitor, Mr. Kent, did receive an invitation from your counsel, Mr. Baldwin, and that your competitor, Mr. Kent, did discuss with Mr. Baldwin the amount of the bid that he was going to make. Now you have your doubts as to whether Mr. Baldwin knew your bid. Didn't Mr. Baldwin know that you were going to bid fifteen per cent? A. I am not sure.

Q. But didn't you talk that over with somebody? A. I may have, but I cannot tell you. I don't generally do these things, tell other fellows my bids.

Q. Well, you told me to go to it, so I will ask you a straightforward question which obviously must be in mind and that is, whether there wasn't some arrangement made through Griggs, Baldwin & Baldwin by which you should have some apparent competitors who would bid a good deal more than you bid so they wouldn't get the job. What do you say to that? A. I say, no.

Q. Well, I think we will let that rest for a minute. Now, when did you become interested in the Gun Hill Company, the Gun Hill Realty Company? A. Last fall.

Q. From whom did you buy your stock? A. I think I bought it at the instance of Mr. Otis H. Cutler, a friend of mine who told

me about this proposition and thought it was a good investment. I subscribed ten thousand dollars of stock.

Q. Did you know Mr. Hedley? A. Yes.

Q. You knew Mr. Pizzini? A. Mr. Pizzini and I were at lunch one day. We didn't open any bottle at all.

Q. That was too bad. A. And talking generally, he is a pretty close friend of mine. He spoke of this and he told me that he had sixty thousand dollars in it, and Mr. Hedley was in it and several others. He said, I think, that it would be a good thing for me to take on something like that and I bought ten thousand dollars worth of it.

Q. Well, that company has sort of had the inside track up there where a station was to be erected at White Plains Avenue. A. I give you my word I don't know. I don't know where it is, I tell you now.

Q. Well, where was the good thing in it? A. Because Cutler represented it.

Q. He told you there was a good thing in it? A. The advancement in the real estate when the Rapid Transit gets there, that is it in my judgment. That is why I bought it.

Q. Well didn't the insiders knowing where the station was to be erected, get in on it early? A. I don't know the first thing about that, Mr. Moss. I don't know when the property was bought. This was in September of last year.

Q. Your first knowledge of it was September of last year? A. Yes.

Q. Did you ever talk with Mr. Hedley about it? A. Afterwards. yes. When I would give him a check I didn't know he was president of the company or active, until I got the stock signed by him as president.

Q. Did Mr. Hedley oversee the work that you were doing in the third-tracking? A. He had something to do with it, principally Mr. Pegram.

Q. And Mr. Gardner—they were on the job all the time weren't they, watching what you were doing? A. Of course they were. Hedley's general manager and Pegram's chief engineer, that was their duty.

Q. They gave a good many directions didn't they? A. Yes.

Q. You got so that you kind of relied upon them didn't you? A. Well, to tell you the truth, I didn't see Hedley very much.



Q. I am not talking about Hedley so much as Pegram and Gardner. You relied on them a good deal didn't you? A. Yes, certainly, they were my bosses.

Q. Practically, the work was done under their direction wasn't it? A. Why, of course it was.

Q. And the engineering directions of your work were really given by Pegram and Gardner weren't they? A. That is right.

Mr. Shuster.—Are you in the habit of investing without looking into the proposition that underlies the investment? A. Yes, I have done it often. I am interested with Mr. Cutler in other things. He has taken my word for things.

Senator Lawson.—It depends largely upon who represents these things. A. If I investigated personally everything I buy, I wouldn't buy much.

Mr. Moss.—Now, Mr. Gillespie, the other day when you were here at my request, you or your son handed me these figures which I will read into the record subject to your corrections if there are any to be made. You say there is still due to Terry & Trench forty thousand dollars and to Snare & Triest sixty thousand dollars. Those figures still remain about that way don't they? A. Forty-nine thousand to Snare & Triest, thirty-six thousand to Terry & Trench.

Q. Then you said that there was in the Guaranty Trust Company, the executive account, thirty-seven thousand dollars. A. Well, whatever it was that day, I have forgotten now. And there was due from the Interborough, \$68,000.00.

Q. Which has since been paid? A. Yes.

Q. And there was retained on account, two hundred and thirty thousand dollars, making it, the day of your last testimony, three hundred and thirty-five thousand dollars. A. Well, it is actually three hundred and twelve thousand dollars.

Q. Well, that was three hundred and twelve thousand dollars subject to pay to Terry & Trench, and Snare & Triest, eighty-five thousand dollars. A. That's right.

Q. Leaving a balance in your own hands of two hundred and twenty-seven thousand dollars, after what you had previously paid yourself? A. Yes. Will you let me give a little statement, please.

Q. Surely. A. Details of the cost of the Manhattan Elevated contract and the proceeds' disposition, as received in connection therewith, are fully shown by the books kept at the New York office. And our statements already furnished, have been investigated by your accountants, Perley Morse & Co. They have been thoroughly through our New York books and they have said to us that what we know must have been the fact that they found no evidence to support the charge the proceeds of the third-tracking contract were used for other than proper purposes. The payments received from the Interborough Company which exceeded the expenditures proper, chargeable to the contract were about three hundred thousand dollars, (That is there was three hundred thousand dollars over and above what we paid for our own overhead expenses) that has become mingled with the general funds of the company and it is therefore impossible to specifically follow those.

You asked me the other day if I couldn't dig them out. I can't. This statement however, will cast no light on the subject of your inquiry beyond supporting the testimony I have already given. There is not a single transfer of funds from our New York or our Pittsburg office, not a single entry in our Pittsburg books which relates directly or indirectly to our elevated Manhattan statement.

Q. Well, now wait a minute about that. You say the accountants examined thoroughly the books of the New York office? A. Yes, sir.

Q. But they didn't examine thoroughly the statements of transactions between your New York office and your Pittsburg office did they? A. That is right.

Q. You have held them back? A. That is right.

Q. And you declined to give any information from them today? A. I decline to have Perley Morse & Company do it.

Q. You declined to allow this committee to do it and the last time we had a fuss with your son it was when I asked him to hand those accounts to the Chairman of the Committee for inspection. Now, you are not being asked to give anything to Perley Morse but I want to know whether you continue in the refusal which your son expressed to allow the Committee to see those statements of account between your New York office and your Pittsburg office, showing moneys that went to Pittsburg and moneys that came from Pittsburg and to what use they were applied. A. Now, I

will answer that in this way. I recently submitted to you a proposition and we saw evidence of it the other day in the examination in the office by your exposing private matters that I don't think was fair nor just and I don't think had anything to do with this investigation.

Q. It was fair and I will not sit here and allow you to say that, because you made the statement voluntarily that your Acqueduct contract was not political. A. Yes, and I immediately asked you how you paid Mr. Bensel five thousand dollars. It was pertinent.

Q. Well, let it go at that. But I proposed that you could have any one of five or six accountants that could be agreed upon by your counsel and our counsellors and that was refused. Never heard anything about it. A. No, I still say that if you can agree upon some accountant that can certify to those Pittsburg books, why I have no objection.

Q. Well, that doesn't meet the case, Mr. Gillespie, because we haven't time to go through the sinuous test of a discussion concerning the merits of five or six different accountants. The Committee is a pretty good accountant and it isn't for the purpose of submitting those papers to accountants that we are so much concerned as it is to submit them to the inspection of the Committee and I want to know why you persist in the declarations made by yourself and your associates and your counsel heretofore to give to this Committee a free examination of those statements of accounts, showing the financial transactions between your office in Pittsburg and your office in New York, and still you refuse to do it. A. I do.

Q. You refuse? A. I do.

Q. Then of what possible good would it do to agree upon some accountants? A. Now the reason that I ask for that is because—

Q. It is manifest even from your testimony this morning that the moneys that you were getting from the Interborough Company upon this contract were mixed with your general funds and to a very appreciable extent went into your transactions with the Pittsburg office and in order to see whether any of that money came out of the Pittsburg office and went to persons whom this Committee would have a right to inquire about. That is the object of desiring to see those statements.

Now, not only is that the condition, but in addition to profits of your own which you have paid yourself through the financial transactions that have already occurred, there appears to be in your hands now after disposing of Terry & Tench and Snare & Triest, a very appreciable sum which you haven't put in your personal account and which remains I might say undivided. A. We haven't got it yet.

Q. Well it is there and I guess the banks and the Company are both good. A. Now with all due respect to this Committee, I have had my fingers burnt by liberally allowing your accountants to go into our office and I shall not do it again.

Q. Mr. Gillespie, your fingers weren't burnt very badly. I see no scars upon them. If your fingers were burnt then that is very interesting. If your fingers were burnt by the accidental circumstances of the Quigg correspondence coming out—I don't think your fingers were burnt. A. No.

Q. But that is a confession that is interesting. So far as the coming in of the Bensel name, if there is any responsibility for it you have got to take your share of it because you shouldn't have boasted that your Acqueduct Contract wasn't political. A. I boast yet.

Q. But you put that it and were subject to cross-examination. Now then, how under the sun, Mr. Gillespie, are your fingers going to be burned by giving to the Committee an inspection of the way you used the money, some of which went from the Interborough account into your private accounts. How your fingers were burnt, I can't see. You simply don't want us to see them that is all. A. There is nothing to conceal but there is some private business and I don't want to expose it.

Q. I spent two weeks once talking to a famous man about things that he called his private business. A. Well, I hope you won't spend that long with me.

Q. If it is necessary we will. A. All right.

Q. We may not today but as to the gentleman I referred to, in an entirely pleasant way I don't think it ever paid him to refuse to testify to certain things upon the ground that they were his private business. I think today he wishes he hadn't taken refuge behind that plea and I have my doubts, Mr. Gillespie, but that in the

long run, providing your fingers won't be burned, that it will pay you practically or sentimentally, to take final refuge behind the fact that those papers cover your private business. A. I haven't had the plea that those papers cover your private business. A. I haven't had any fear of having my fingers burned in the sense that you were talking about just now, there is nothing in those books that I promised to pay and everything that I have earned belongs to me when I get it.

Q. And you can do with it what you please and give it to whomsoever you please? A. I am not going to give it to anyone except the concern.

Q. And if you do, you won't let us see your private accounts.

Senator Lawson.—The Quiggs incident is a past matter. As Chairman of the Committee, I assumed personal responsibility for that. But I am inclined to say that there are a great many questions asked by this Committee, a great many answers given which permit material things to hang in the air. It does harm to those that appear before the Committee and it permits an unsettled state of affairs that should not prevail. And I certainly hope as a member of this Committee that if you or your company are opposed to some accountant who has been employed by this Committee, that you will not permit that to stand in the way of affording this Committee a personal examination of your Pittsburg matters so as to bring this to earth and not have anything hanging over.

Mr. Moss.—Mr. Chairman, if I am any judge of physiognomy and attitude and of the presence of impressive counsel, I think Mr. Gillespie has taken his position. Now, there is no doubt that there are such accounts in existence in the city of New York and you have control of them, statements of account between your office here and the office in Pittsburg. There is no doubt that you have them under your control. A. I presume there are the regular weekly statements, I haven't seen them.

Q. You said your son had them in his pocket the last time you were here. A. I don't know, perhaps he did have them.

Senator Lawson.—I think he did have them.

Mr. Moss.—Now, in order that the record may be perfectly

clear I want it understood that what we have called for are the accounts, the statements of account made weekly as has been testified to, between the New York office of the Gillespie Company and the Pittsburg office of the Gillespie Company, showing the financial transactions between those two offices. They are asked for the reason that it has appeared by proof that in the moneys that went to Pittsburg, were necessarily moneys that had come through this third-tracking, which had been mixed with the firm's money here in New York. That is all in evidence. And just to keep the record straight, Mr. Chairman, I ask you to direct the witness to produce them.

Mr. Cravath.—Both Mr. Gillespie Sr. and Jr., have several times had the Pittsburg statements with them and there has been

Mr. Moss.— Well, assume they are here now, for all purposes no refusal to have them here in their pockets. of our present discussion. Assume that those statements are here now but their refusal as stated before, is to exhibit them to the Committee. That simply makes it legally apparent that the witnesses have not disobeyed the subpoena of the Committee which required them to produce those statements, but the refusal is to show them to the Committee.

Mr. Cravath.— Yes. •

Mr. Moss.— They have not been produced nor exhibited to the Committee.

Senator Lawson.— The writings and papers called for and stipulated in the subpoenas have not been officially produced before this Committee.

Mr. Cravath.— But they have been brought here by the witnesses.

Senator Lawson.— But, Mr. Cravath, the Committee cannot look through the pockets of the witnesses and read papers that have been subpoenaed. Now along the lines of the suggestion made by Mr. Moss—pardon me, let me read into the record the requirements of the subpoena. I do that in the presence of the witness and of his counsel.

They were required in the subpoena to bring and have, each of them, that you have and bring with you, all reports rendered by your Pittsburg office to your New York office and vice versa, from November 1, 1913, to date. The date of that subpoena was May 14.

Mr. Feinberg.— That means that they are following the subpoena.

Mr. Smith.— They are asked now to produce.

Mr. Schuster.— I don't think, Mr. Cravath, that anybody attended to that matter at all.

Mr. Cravath.— The papers called for by that subpoena have been officially here in the possession of Mr. Gillespie, Sr., and Jr., but they do decline the request that they be exhibited to the Committee.

Senator Lawson.— Now, Mr. Cravath, let me ask you what is the use of a subpoena stipulating the production of certain writings if the witnesses are to bring the writings before the inquiries and withhold them from the official view?

Mr. Cravath.— The law is perfectly clear, Mr. Chairman, that the witness does his full duty if he brings the papers and has them available for use in connection with his own examination and Mr. Gillespie, Sr., and Jr., have declined to turn those papers over for examination by the Committee for two reasons. First, because in no event could a witness be required to thus turn over his private papers and second, because there was not the slightest indication that the contents of those papers were in any way relevant to any subject which this Committee is authorized to investigate.

Mr. Moss.— That is for the Committee to decide.

Mr. Cravath.— I am stating the opposite in answer to it.

Senator Lawson.— Mr. Moss, I wish you would make it direct. Mr. Gillespie, the Chair will direct that you produce for the inspection of the Committee, the reports rendered by your Pittsburg office and your New York office, vice versa, showing cash receipts and cash disbursements and moneys transferred from your New

York office to your Pittsburg office and vice versa, from November 1, 1913, to date. The Chair directs that you produce those papers for inspection of the Committee of the Legislature. Sitting with power to make inquiry into Public Service Commissions, law action amended for it.

May the records show that the witness declines for the reasons heretofore stated as applying to his son's case and his own?

Mr. Moss.—Do you accept the statements which your counsel has made on the records? A. I wasn't listening.

Q. In order that the records might be complete I said that the witnesses' declarations apply with that request for the reasons heretofore stated as applying to his son's case and to his own.

Senator Lawson.—Then the Chair will present the matter in the executive session to the Committee.

Mr. Moss.—Have you directed him?

Senator Lawson.—He has declined through counsel. I ask you now, Mr. Gillespie, do you decline personally? A. I do.

Mr. Moss.—And you accept the statement of your counsel all the way through? A. I do.

Senator Lawson.—Then the Chair will commit the matter to the Committee in executive session with directions to the counsel as the executive session decides for further action in the matter.

Mr. Moss.—And let it be understood that counsel do not concede that these documents have been in this room or before the Committee or in their possession.

Senator Lawson.—The Committee has no knowledge that the papers called for in this subpoena came before this Committee either here or in the Committee room wherein the Committee is sitting.

Mr. Moss.—Now, I will go a little further. Did your office in New York transfer money to your Pittsburg office in November, 1913? A. I can't tell you as before that there is not a single entry in the books.



Q. Never mind if you can't tell me whether your office in New York transferred money to your Pittsburg office in November, 1913, I ask you to refer to the accounts which have been stated to be in this room, to refresh your memory.

Mr. Cravath.— I didn't say they were in this room this very minute.

Mr. Moss.— Then you haven't complied with the subpoena.

Mr. Cravath.— We have had them here several times.

Mr. Moss.— I know you have, or at least I will take your statement for it.

Mr. Cravath.— The statements are here. Mr. Gillespie, Sr., has them.

Mr. Moss.— Then I ask you to take those statements in your hand and read them to refresh your recollection as to whether you transferred moneys to your Pittsburg office in November, 1913. A. I haven't seen them. I will look at them and see. No, there is none, Mr. Moss, there was no money transferred in November.

Q. Was there any in December? A. In December, the 26th, two amounts, for ten thousand dollars. Mr. Morse has got all that.

Q. I don't care anything about Mr. Morse. Did your office in Pittsburg transfer any money to your office in New York in November 1913? A. Was there any money sent back to New York, Tom?

Q. I don't ask you to refresh your recollection by asking questions of anybody but take those exhibits and refresh those recollection. Well, get them into your hands. He has got them but I want you to have them. A. No, there was none.

Q. Was there any money transferred from your Pittsburg office to your New York office in December, 1913, and if so, how much? A. New York to Pittsburg?

Q. From Pittsburg to New York in December, 1913. A. I said no, I have answered that.

Q. Now, let's take the month of January, 1914. Please tell me if any money was transferred from your New York office to

Pittsburg in that month. A. Ten thousand dollars on January 2, ten thousand dollars on January 20. That is all, sir.

Q. Are you refreshing your recollection from the weekly reports between these two offices or from some statement. A. State-ments.

Q. Well, I want you to refer to the original reports. A. These are the weekly statements.

Q. Now, those two sums were sent from New York to Pittsburg in January. What sums were sent from Pittsburg to New York in January. A. There was none, sir.

Q. Now, we will take February, 1914. Please tell me what amounts were sent from New York to Pittsburg in February.

Mr. Cravath.— You have a statement showing that.

Mr. Gillespie.— I have given you that whole thing. I gave it out in a statement.

Q. I am asking you to testify, refreshing your recollection from those reports. A. New York office fifteen thousand dollars on February 2, to Pittsburg. Five thousand two hundred and thirty-three dollars on the same day. Forty-five hundred dollars on the same day. February 18, twenty thousand, seven hundred dollars. That is all.

Q. Now give us the transactions from Pittsburg to New York in February. A. February 27, twenty thousand dollars and seven hundred dollars.

Q. Any more in February ? A. No.

Q. Now let us take March. From New York to Pittsburg. A. None in March.

Q. From Pittsburg to New York ? A. Nothing.

Q. You have given us everything in March and there is nothing. A. Yes.

Q. Mr. Chairman, do you want to go further with this before luncheon ? I think we had better suspend until 2:30.

Mr. Cravath.— Well, now, will you have Mr. Vanderbilt this afternoon ? It would suit me just as well, there are only four of us here. What do you want to do, finish on Monday. If he could come a little bit later.

Mr. Moss.—What time do you expect Mr. Vanderbilt ?

Mr. Cravath.—Well, make it 3:00 o'clock if you like.

Mr. Moss.—We have to arrange with Mr. Vanderbilt as he is a sworn witness you know and the understanding was that he was to have a right of way. We will be here at 3:00 o'clock then and finish up. Then we will expect Mr. Gillespie to return at 3:00. We shall suspend until 2:30.

Mr. Cravath.—Make it 3:30.

Mr. Moss.—Very well then.

( Adjournment until 2:30. )

#### AFTERNOON SESSION.

Senator Thompson.—I understand that at the City Hall, there is more or less uncertainty about the future action of this Committee in reference to some matters before the Committee last week. Now, so that there won't be any uncertainty about the waiver, this Committee has got entirely through with the question that come up in relation to charities which was first cousin to wire tapping, and we have also got entirely through with the Seymour case, so-called, and everything that the head of your city administration had before this Committee. This Committee is finished with all of those subjects, and we don't propose to go into them again. That makes the matter certain.

Mr. Moss.—In other words, if I understand you correctly anybody that wants to do anything needn't hold back on account of this Committee in courtesy to this Committee.

Senator Thompson.—Well, they can construe that any way they want to. I understand that means almost with reference to the Law Department connected with the city. I told Mr. Reynolds that he would be heard soon. Other gentlemen have a prior right. Well, we will hear him in a minute. That is a sort of a collateral matter, too, and I didn't know that Mr. Reynolds was here.

Mr. Vanderbilt, we have held him over and Mr. Gillespie is held over also from the morning session. Well, we will listen to Mr. Reynolds this afternoon. We will hear you this afternoon,

Mr. Reynolds, will you set the time for Mr. Gillespie, say five o'clock.

Senator Thompson.— Well, if Mr. Vanderbilt will tell you how long he is going to stay with us, I will let you know.

Mr. Moss.— Say five o'clock.

Senator Thompson.— Half past four.

Mr. Moss.— Mr. Vanderbilt, how long have you have director of the Interborough Company ? A. Since its very inception.

Q. There are two or three matters that we have been inquiring into which I want to bring especially to your attention. I don't want to travel over the same long route that I did with Mr. Sullivan. Now, the first that I want to speak to you about particularly is the Stevens Contract, or at least the proposed contract with Mr. Stevens for third-tracking the Manhattan Railway. Would you be kind enough to tell us when you first heard of the Stevens proposition ? A. During the summer of 1913. In either the end of July or the month of August or the beginning of September.

Q. Was that before the proposed contract was brought up in the Board as a formed contract ? A. That was afterwards. I was not present at the board of meeting.

Q. You were not at the meeting ? A. I was in Europe at the time the meeting took place.

Q. How was this matter first brought to your attention ? A. I was in London and Mr. Read, Mr. William A. Read, one of the Directors of the Interborough Company, stopped in to see me at my hotel. He talked of —

Q. Pardon me. I wish you would give your conversation with Mr. Read in all the detail that you can recall. A. As nearly as I can remember, we talked over the things in general; he told me he would come over and brought some of his children over to take a trip and a rest. He asked me what I had been doing and I told him I had been yachting with my family. I had my yacht over there, had been up in Norway cruising around the coast; then we talked about business conditions in America in a very general way, and then he said there had been a little mix-up in the Interborough Board before he had left this country. I asked him what it was

about and he told me that Mr. Shonts had called a meeting of the Board suddenly, and that he had had a draft of a proposal from somebody named Stevens. He had been associated with him in the Panama work. I think he asked me if I knew Stevens. I said I didn't know him except by reputation. I asked him what was the trouble, and what caused the discussion, what was the contract, what caused the discussion of the Board. He told me that some of the directors had objected one to one because of the proposal one to another, and that he had thought that the Subway Construction Company ought to be capable of doing that work. He told me that they had one objection to the contract. The proposal was that it would include all of the equipment and everything else. Another objection was that Stevens didn't have sufficient organization.

We simply talked it over in a very general way, and I said, "What happened" ? And he said, "Nothing happened." I said, "was any vote taken on it" ? I remember asking him that distinctly and he said, "No, no vote was taken," and I said, "Will it come up again, will it come up while we are away" ? And he said, "I don't think it will come up until we get back". I asked him when he was coming back, and he told me he was going back some time in September. I was bringing my son home from school about the end of September, so I said, "Then, we will wait until we get back and we will have a chance to go over the whole thing." That is the substance of my conversation.

Q. When next did you hear of it ? A. My recollection is that when I got home that year I inquired of some members of the board in the board room, either at the meeting or before the meeting, or after a meeting, what about that proposed third-tracking contract, and I was told that it was all off. Nothing doing, I didn't hear anything about it as far as I can remember again until your Committee took up the investigation.

Q. Did you ever talk with Mr. Morgan about it ? A. Never.

Q. With any one connected with Mr. Morgan's office ? A. Never.

Q. Did any one ever tell you of any attitude that Mr. Morgan had taken toward it ? A. No.

Q. Did you hear of all that Mr. Morgan had written about it ? A. Only through the Committee's bringing that out.

Q. Tell us about it. A. I simply read it through the testimony that was brought out through this Committee.

Q. Do you know whether or not Mr. Morgan was consenting to that Stevens arrangement? A. No, nothing about his attitude. I never spoke to him or any member of his firm about it.

Q. Was his attitude toward it mentioned by any one of the Board? A. I never heard it mentioned.

Q. Now, let me carry you a little farther along, and ask you about the Gillespie contract. When did you first hear of that? A. When it was brought to the board or Executive Committee meeting, and who brought it up? A. As nearly as I can remember, Mr. Shonts.

Q. Do you remember what was said about it? A. No, I remember we discussed it in a very general way. We discussed the responsibility of the Gillespie firm. He had a list of the bids there, and as he was the lowest bidder that was all.

Q. Was the percentage discussed in that meeting? A. The percentages were given in the report, I remember that.

Q. Was there any opposition expressed by any member of the board to the giving of this contract to Gillespie at fifteen per cent.? A. Not that I can remember.

Q. You didn't express any objection to it? A. I did inquire into what percentages were being given for very hazardous work, and work of more or less the same nature. I knew how hazardous this particular work was from my own experience in a great many years ago when the New York Central changed their tracks and built the Harlem River bridge, about twenty years ago.

Q. Did you follow the work that was done under that contract? A. No, not especially.

Q. Did you know that the principal part of that work was not done by Gillespie at all? A. No, I didn't know that.

Q. The principal part of that work was done by the firm of Terry & Tench, who had been successful bidders against Gillespie by a fraction of a per cent., and they took it on a profit of four and a half per cent., you didn't follow that? A. No, I didn't follow that.

Q. Well, who to you seemed to stand out as the persons that recommended Mr. Gillespie, or stood for him in the board? A. I don't think anybody especially.

Q. Well, there must have been somebody that brought him forward? A. Practically all of the matters that come up to the board or to the Executive Committee are brought up by a report either verbal or written from the President or some of the operating officers and using their judgment decide whether to let the contract and using their judgment decide whether to let the contracts or not.

Senator Thompson.—The question that came before the board was whether or not to accept the President's recommendation practically. A. Yes.

Q. Did you understand the President was recommending Gillespie? A. As the lowest bidder.

Q. Well, not only as the lowest bidder, but as a personality? A. No, as a responsible contractor.

Q. Did you think that Mr. Gillespie was going to take the entire contract? A. I understood he was, yes, as far as I can remember.

Q. Did you understand that your company was going to make a contract with the three lowest bidders? A. I don't think I knew that at the time. I don't remember I am certain.

Q. Did you know that the two bidders against Mr. Gillespie were going to be invited by Mr. Shonts to be invited to participate in Mr. Gillespie's contract? A. Yes, sir.

Q. You didn't know then that Terry & Tench were going to carry the backbone of the operation and that Mr. Gillespie was going to skim off the cream for an apparent oversight? They doing about a million dollars' worth of work and that on the foundation, Snare & Triest did about a million dollars' of work in the upper part of the city, but the backbone of the work was carried by Terry & Tench, and the practical oversight, the work was conducted by your own people, Hedley, Pegram and Gardner at less. That is the way the testimony seems to me. Did you have in your mind any such result as that when you agreed to the making of the contract with Mr. Gillespie? A. I didn't know those details at all.

Q. Now, I have in my pocket a statement which was handed to me by Mr. Gillespie this morning in which he says, "The total amount of the cost of the Manhattan Elevated contract was

\$8,971,374.94. The contractor's fifteen per cent. was \$1,345,401.21. Those two figures added together made the cost of the contract to the Interborough Rapid Transit Company \$10,316,776.15.

His statement goes on further to say, "We received in cash for monthly estimates, \$9,223,917.98, and we received in cash on retained per cent. \$800,000.00, making a total of \$10,023,917.98, leaving an unpaid balance of \$292,858.17. And in dividing up the profits which have been paid out thus far, he says he paid out to Snare & Triest on account of percentage which means profits \$145,000.00. He paid out to Terry & Tench Company on account of profits \$245,000.00, he paid out to the T. A. Gillespie Company on account of profits \$545,865.56, and he still has cash in bank of \$49,090.94, and items not sent out by May 1st of \$46,909.36 deducted from that leaves \$2,181.58.

So that the profit charged was \$1,345,401.21, of that Gillespie retained \$545,865.56, he is considered as having paid himself that, and he still has coming to him \$292,858.17, which is subject to be reduced by \$85,000, that he still owes Snare & Triest and Terry & Tench on their share of the profits.

So from this statement which he rendered, you can see the amount of profits that remained in his hands and still remain in his hands undivided in a job where he only did about a million dollars of the work himself, where he let out of the work to other people, and where he retained a nominal headship, using I may say his bank account as far as it was necessary to finance the operation. That shows as near as we have been able to get it thus far the situation of the Gillespie accounts. I want to ask you if in connection with the Gillespie contract or in connection with anything relating to the Interborough Company, anybody ever said anything to you about commitments and obligations. A. Never.

Q. Did you ever hear the expression "commitments and obligations" before I put it to you? A. I read about it in the testimony before this committee yesterday.

Q. Did anybody ever say anything to you outside of this committee room about "commitments and obligations?" A. No, sir, they did not, except in talking to friends and to persons inter-



ested, I talked it over with some of the Interborough directors when I saw the testimony before the committee.

Q. Well, now, just to refresh your recollection, Mr. Vanderbilt, did you ever tell anybody that someone had said something to you about commitments and obligations? A. I don't remember.

Q. Did you ever say to anybody in an official position in the city of New York that someone had spoken to you about commitments and obligations. A. No, sir, not that I can remember.

Q. Did you ever learn whether or not the Gillespie concern had any relations, friendly or business with members of your board or of your organization, or with those that financed your operations? A. No, sir.

Q. Never inquired into that I suppose. A. No, sir.

Q. Did you ever learn what it was that converted the Mayor from an active and loud antagonist of the Interborough Company and of its propositions to its friend and supporter? A. It was thought it was the best contract for the city.

Q. Well, you will remember the letter of July 11, (I think it was) July, 1911, at any rate, where he referred to your propositions; that is, the propositions of your company as damnable rascality which he wouldn't stain his hands with, and it wasn't so very long afterwards that he was advocating and signing contracts which were not substantially different from the propositions that were pending at the time he wrote that letter. Did you ever learn what it was that changed him? A. I think that between the time he wrote that letter and the time he signed the contract, the Interborough Company had withdrawn negotiations, negotiating directly with them.

Q. Don't you know that the Interborough having withdrawn from the negotiations that it was largely due to the Mayor's urgency that they re-entered? A. No, I didn't know what made them re-enter. I always thought that was due to Mr. Ray and some of the others coming in between.

Q. Well, some gentlemen interested in the Pennsylvania railroad did intervene, but do you know by what argument he was convinced that a preferential was not damnable rascality? A. No, sir.

Q. And do you know by what argument he was convinced that

the city of New York might enter into partnership relations with your company after he had violently opposed on principal, that form of arrangement? A. No, sir.

Q. Now, you are speaking about the arguments of Mr. Lowe and Mr. Ray and others, I recall one of the arguments advanced by Mr. Lowe at that time. He said that the city of New York had entered into relations with the museum, out of which had grown a great public museum. The city of New York had entered into relations with the Zoological garden corporation, out of which had come the great collection of animals and the beautiful things in Bronx Park, and he didn't see why it wouldn't be a good idea for the city of New York to enter into co-partnership with the Interborough Railroad, and so develop a wonderful railroad system. Do you think, Mr. Vanderbilt, that it was argument of that sort that changed the Mayor from his fundamental position against co-partnership between city and the railroad company? A. I haven't any idea what made him change his mind except the fact that after further study, he probably thought it was better.

Q. Who do you think on behalf of your company produced that change in him? A. I don't think there was anybody in behalf of our company.

Q. Did you know that any particular individual was meeting with the Mayor and talking with him? A. No, sir. Might I say something there?

Q. Certainly. A. I knew Mayor Gaynor very well personally. The only single time as far as I can remember that we ever mentioned the Interborough Company in any conversation was one time during the winter of, I think it was 1910, when I saw him at the City Hall. He had made me chairman of one of his committees, the committee to receive former President Roosevelt on his arrival here, and I used to go to the City Hall quite often to talk over various things in connection with that, and he said to me one day, he said "Mr. Vanderbilt, you are the director of the Interborough Company, aren't you?" As far as I can remember this is his conversation. I said, "I am. I have been there since it first started, when Mr. Belmont first originated it." Then, he said the conditions are terrible, the crowding of the trains is perfectly horrible. I said, "I know that. I ride on the subway and ele-

vated twice a day," and he said, "they are going to get worse." I said, "I know that." Well," he said, "what is going to be done about it?" And I said, "I don't know unless they build some more subways." He said, "Have you got any ideas on the subject," and I said, "Why, it always seemed to me that as long as the city owns the present subway, that you and the city government or the Public Service Commission ought to get on some fair basis with the Interborough and make some fair deal." That is the only conversation I ever had with him about the Interborough.

Q. Do you remember the time when he offered, this was way back in 1910, when he offered to Mr. Shonts to be the arbitrator between your company and the Public Service Commission ? A. I don't remember. I remember it very vaguely.

Q. Mr. Shonts made a report which was considered important enough to be extended into the minutes in which he used that expression. Isn't it a fact, Mr. Vanderbilt, that you gentlemen of the Board of Directors relied mostly upon the president who was also chairman of the Executive Committee if I remember correctly, you relied upon him to manage the negotiations with the public officials ? A. To manage all of the negotiations that had to be with the company.

Q. And with the public officials ? A. Yes.

Q. Were you consulted about the additional amount that was passed to him, the \$150,000 ? A. Yes.

Q. Wasn't it understood that in that meeting or in the meetings when that action was considered and afterwards made effective, that the amount to be paid to him would be charged to construction ? A. I never so understood it.

Q. Did you understand that the amount to be charged to construction would eventually have to be paid by the City of New York ? A. Everything with regard to construction, but I didn't understand that those moneys were going to be charged to construction. I thought the company itself would pay them out of earnings.

Well, what about the bonus to Mr. Rogers ? A. I always understood all those bonuses were to be paid out of earnings; that was my own understanding.

Q. Well, was that said in the meeting or did you simply have that idea in your own mind ? A. That I don't remember at all.

Q. You don't recall any conversation in which it was decided that that was not to be charged to construction, but was to come out of the Company ? A. No, sir.

Q. Now, I want to ask you about Mr. Prendergast, substantially the same questions I asked about Mr. Gaynor and with the same idea in the questions. Have you any information, any knowledge or information as to the means by which Mr. Prendergast was changed from an ardent and abusive enemy of the company, and its plans to a friend and an ally. A. No, sir.

Q. Now, weren't these things ever discussed in a friendly and confidential way among you gentlemen who were members of the board. How did these conversations occur ? A. I don't remember any such conversation.

Q. Now, Mr. Vanderbilt, you will excuse me, but it occurs to me that if Billy Sunday had accomplished conversation as rapidly as that, the whole country would ring with his praises. I don't know whether they would be praises or what they would be, but you would be considered even more wonderful than he now stands, and I am wondering whether it isn't possible that you gentlemen after the contracts were carried through and your company could begin to feel comfortable about it, whether you didn't talk among yourselves about the wonderful conversations of these gentlemen who had strayed away from grace, at least as far as the Interborough was concerned. A. Speaking for myself, Mr. Moss, I took no part whatever in any of the negotiations. All I did was when a proposition was submitted to the board or to the committee, I used my judgment and voted for it or against it. I took no part at all in any of the conversations that had to do with the negotiations.

Q. But what I am speaking of is not so much the form of proceedings in meetings as the casual and friendly conversation between men who have been associated together for years, and if you say that it hasn't occurred, I shan't press you further. I take your word for it without hesitation. Now, just one other question. It has appeared here that the figures relied upon by the city in determining the terms and times of the contract were in part based upon estimates of increase in business, increase in the totals of passenger, for years to come, in your subway and in your elevated service.

Yesterday we examined the briefs of your counsel in which

we found a shrinkage of millions of passengers on the elevated and an infinitesimal increase of passengers in the subway. And a plain strong statement that the time when the city can come in on these contracts must be deterred indefinitely and probably for many years, because the expected increase of business isn't coming, and is not likely to come. Have you any information about the individuals who proposed and stood for the figures that were used? A. No, sir. I always understood they were prepared in the contracts of the Interborough office, in Mr. Gaynor's office.

Q. Well, weren't there figures that came before the conferees, which were larger than the figures that your Mr. Gaynor would stand for? A. I never heard of that.

Q. Weren't there figures that Mr. McAneny stood for which were larger than the estimates of your own people? A. I never heard of it.

Q. During the pendency of these negotiations and in particular at the time that the Wagner bill was before Mayor Gaynor, who was to sign it or refuse to sign it, were there not figures presented by committees from the people's institute, and from the city club carefully worked out figures—I am sorry I haven't got them with me—showing that the estimated increase of passengers could not occur, and that the time when the city might participate in the profits of this contract could not come for many years. Do you remember anything about this? A. No, sir.

Q. May I ask you, Mr. Quackenbush, if you have a recollection of the figures and estimates being produced at that time by Mr. Wright, representing the city club, somebody representing the people's club, which traversed the allegations of great increase or the prognostication of great increase of traffic.

Mr. Quackenbush.—Mr. Moss, I wouldn't say that at this instant I recall those particular individuals, but that such a thing took place I do recall. A. Yes.

Mr. Quackenbush.—I will also say that your question to Mr. Vanderbilt which implied a difference of opinion between the city's representatives as to figures and our own, I would answer affirmatively.

Q. Am I right in my question as to whether Mr. McAneny stood for higher figures than your company stood for ?

Mr. Quackenbush.— His views were more enthusiastic than my own during the period of investigation.

Q. Well, that is a fair answer, and Mr. Quackenbush isn't a fact that against the warning by the Interborough Company they not only upon the investigations of outsiders, but of its own judgment that there was a set of city officials of whom Mr. McAneny was one who persisted in taking a roseate view of the probably increase in passengers. I put the inquiry right there.

Mr. Quackenbush.— That is so. I argued that as a reason why they shouldn't let the B. R. T. into Broadway, that there wouldn't be business enough for all.

Q. You argued that if the B. R. T. came up Broadway and cut in on the short haul business there that there would be trouble not only for your company, but for the city if it expected to get anything by and by.

Mr. Quackenbush.— Precisely, if the city were going into it as a business proposition there wouldn't be a profit there, but the reply of these gentlemen was that they were not engaged in looking for profits, but in the building up of the city and that they would take care of it all out of the taxation.

Q. They would take care of it out of taxation. Why, then, they had their eyes open to the probability that for years to come they would have carried it in the tax budget— large sums to meet sub-way deficiencies ?

Mr. Quackenbush.— I don't think that that is quite as accurate as I would want to make it.

Q. Shade it ?

Mr. Quackenbush.— That was my contention. I don't say that they agreed that it would be done, but their proposition was that if it did meet with losses, then the sociological advantages, the dispersal of the congested population the building up of the outlying districts all would be benefits which they could afford to tax the

property to procure, and of course, we couldn't do any of those things.

Q. Well, now, thank you for consenting to your witness for a minute. The B. R. T. could have come over the Brooklyn Bridge could use this subway that has been prepared for it, that nobody is using now and could have swung back over the Center Street loop and back over the other bridges and have made a complete circuit for the B. R. T. company couldn't it ?

Mr. Quackenbush.— That is what I proposed for in 1911. I thought that was as far as they should go.

Q. At the next session, Mr. Chairman, I will produce for you the estimates that were made at that time by the traffic committee of the City Club, which reached my hands from the files of Mayor Gaynor, estimates which showed that the claim of wonderful increase in passengers would not arrive worked out most carefully in the greatest detail. I found them, or at least Mr. Perley Morse did in the files of Mayor Gaynor. All I wish to suggest is that not only in the arguments of Mr. Quackenbush and his associates with these ideas presented, and the city warned, but on behalf of at least two of the best known city associations with these facts presented in detail and elaboration.

Senator Towner.— Then, you are going to produce those for the records ?

Mr. Moss.— I will produce those for the record at the next hearing. I have no more questions to ask Mr. Vanderbilt.

Witness is dismissed.

Senator Thompson.— What I was getting after was this: the talk that you had with Mr. Read at London. Mr. Read was sworn before he died before this Committee, and after he was sworn and just almost immediately before he died, two or three weeks, he wrote a letter to the Committee in reference to a letter that Mr. Shonts wrote and publicly issued in one of the local papers, and that letter seemed to raise the question at least as to whether Mr. Read when he was here had been correctly quoted. From the letter written by Mr. Shonts it would appear that Mr. Read had said that

he didn't know anything about this matter if the commitments and obligations and from Mr. Read's letter he was apparently taking issue with Mr. Shonts. It is unfortunate that Mr. Read is not alive and we expected to ask him to come, and the next thing we knew he was dead. Are you familiar with the fact that that has been testified by Mr. Young who was a former director of four company, that he and Mr. Lane and Mr. Read have violently opposed the entering into the contract with Stevens and they went and saw Mr. Morgan about it. And Mr. Young produced a copy of a memorandum which he said Mr. Lane made accompanied by a letter from Mr. Lane admitting that the memorandum was his in which he said that he had a talk with Mr. Shonts about this time, and Mr. Shonts said that neither Stephens nor Freedman nor Shonts would get anything out of that percentage, but it was for some commitments and obligations that had been made in reference to the dual subway contracts. Now, that was the Lane memorandum. What I want to ask you was in your talk with Mr. Read, did he refer to that memorandum or the talks for Lane or the talk that Lane had with Shonts about this subject.

Mr. Vanderbilt.—As far as I can remember, he did not refer to any memorandum. I think he said that he and Lane and Young had talked over the subject afterwards, I think he said they went away from the meeting together, and that they had disagreed on this proposal.

Senator Thompson.—Did he say anything about the talk that Lane had with Shonts in reference to the matters that I have attempted to quote from the records as good as I can from memory.

Mr. Vanderbilt.—I don't remember that at all. The first I heard of that was when your City brought it up, and I spoke to Mr. Shonts. I said to Mr. Shonts one day, what about all this and he reported more or less the conversation that he had with Mr. Lane which Mr. Shonts afterwards testified to.

Senator Thompson.—What did he say about it?

Mr. Vanderbilt.—He said that he had talked to Lane and that Lane had said he didn't like Stephens, and he said he knew all about him, that he, Shonts, knew all about him, and thought



he was a good man for the work. Then, he said he didn't like the contract, didn't like the suggestion that it be given to Stephens who didn't have any organization and would have to get one, and he didn't know about his financial responsibility and Shonts said to him, "Who do you think would be a good man for it," and he suggested Stone & Webster. That was the substance of the conversation.

Senator Thompson.—Did Mr. Shonts say to you that he talked about commitments and obligations—that he used the words?

Mr. Vanderbilt.—I don't remember that at all.

Senator Thompson.—Well, I might say that as near as I can remember the record Mr. Shonts swore here that he used the words commitments and obligations.

Mr. Vanderbilt.—I remember seeing that in the record, but I don't think Mr. Shonts said anything to me about that.

Q. Did Mr. Read? A. No.

Q. Did you ever have any talks with Mr. Lane about it? A. No. Mr. Lane very seldom came in to the meetings after that.

Q. Well, did you know that Mr. Lane was very much exercised about this Stevens contract matter? A. I don't think he was any more exercised than the others who didn't like it.

Q. That is Read and Young? A. Read and Young, Freedman objected to some of the clauses.

Q. The reason why I ask you this question is that I am told that you had some talk with somebody about this same conversation at that time. That is the reason why I— A. At which time?

Q. That you had some talk with somebody about this conversation that Mr. Shonts had with Mr. Lane. You either had the talk with Mr. Read or Mr. Lane or Mr. Young or Mr. Shonts in which the term commitments and obligations was referred to? A. I don't remember that at all.

Q. You don't remember that at all.

Mr. Moss.—Didn't Shonts say that Lane objected to the proposed commission that was to be paid to Stevens? A. That I don't remember. I don't remember it. It was a very general talk that I had with Shonts about it.

Mr. Quackenbush.—In the disposition of Mr. McAneny and others to enlarge the prospective profits, under this contract, did you get the impression that the object of those rosy views was the letting in of the B. R. T.? A. Oh, I wouldn't want to say that those gentlemen were not acting in good faith in regard to their belief in those figures.

Q. I didn't say that, I didn't suggest that, but did you look upon Mr. McAneny as being desirous that the B. R. T. should come into Manhattan in the way that it did come? A. Not as B. R. T. I think Mr. McAneny was very enthusiastic about this so-called dual scheme of things.

Q. Well, that involved the Brooklyn company getting into Manhattan? A. But, I am careful in my reply Mr. Moss, because I don't want to have any misconception about the B. R. T. Mr. McAneny took very kindly to the idea of putting into the city of New York a dual system.

Q. Yes. A. And spoke very favorably about giving a distribution in New York to the Brooklyn people, and in that sense he permitted himself to take a very rosy view of the possibilities because he thought that that needed to be done. I want to make it plain.

Q. That is the same thing. A. But I don't think it was because it was the B. R. T.

Q. Well, it was the only company there, you might call it the B. R. T., but the result of a successful advancement of the rosy views which you have just described would be to make an argument for letting the dual system in. A. Quite correct.

Q. And is it possible that a misjudgment concerning prospective increase of business might have come from an overwhelming desire to establish a dual system? A. I think that the dual system had become the pet of the administration, and that their enthusiasm got the best of their judgment.

Q. So much the pet of the administration that even Gaynor, Mayor Gaynor, who had been a sturdy advocate of the B. R. T., finally caved in and let the contract go through with them and all. A. I think that is a part of the case.

Q. That is a part of the case. A. I think it is not the whole case.

Q. But we can only get a case in part as it goes along.

Witness T. A. GILLESPIE is recalled:

Q. Mr. Gillespie, we got down to March, 1914; tell us about April. By the way, Mr. Cravath, have you any idea how Griggs & Baldwin got in on this proposition? A. I am not a witness.

Q. You are not a witness, well do you object to telling? A. I certainly object to talking about my private affairs, yes.

Q. Well your client says he doesn't know. I thought maybe you knew. I am only asking you in a voluntary way? A. I don't know, and if I did, I couldn't tell.

Q. Why do you say that? A. That is not my professional capacity.

Q. We will let it go for that at the present any way. We can't examine two witnesses at once.

Now, we want the amounts sent from New York to Pittsburgh. A. (By Mr. T. A. Gillespie.) I think there was one in March, Mr. Moss. I don't think we gave you the last one in March. Fifteen thousand dollars on the 31st of March.

Q. All right. And none from Pittsburgh to New York. now we go to April. A. April 2d, \$15,000; April 25th, \$17,500.

Mr. Shuster.— That is from New York to Pittsburgh? A. Yes, sir. April 25th, \$17,500; April 30th, \$15,000.

Mr. Shuster.— You will indicate if it is from Pittsburgh back? A. Yes. May 12th, \$10,000; May 19th, \$10,000; May 28th, \$20,000 and \$10,000. Now, on May 1st — will have to explain that item — we collected on account of the American Water Works and Guaranty Company \$225,000, which is credited in the New York office to the Pittsburgh office. That was credited to the Pittsburgh account.

Mr. Shuster.— That was credited to the Pittsburgh account, the funds were not forwarded to Pittsburgh, simply bookkeeping records? A. That is right.

Mr. Shuster.— Had that \$225,000 any connection whatsoever with the third tracking contract? A. Oh, no. We rebuilt the dam on that for the Pennsylvania River. May 29th, \$15,000, New York to Pittsburgh.

Mr. Shuster.— So that there is three separate transactions on

that same day, \$10,000, \$20,000 and \$15,000? A. That is right, \$45,000. Nothing from Pittsburgh back. June 25th, \$24,791.67; June 30th, \$24,895.84. Nothing in June otherwise. July 2d, \$15,000, nothing the other way in July. August 1st, that was \$14,052.05 a check from the Oswego works deposited in New York and credited to the Pittsburgh office.

Q. Had nothing to do with the elevated third tracking? A. Oh, no. August 12th, \$14,145 — ten was just the same thing.

Q. That was how much, \$14,145.05 — no ten cents. August 18th, \$10,000, same character; August 26th, \$10,000. A. Now, those items that I gave you sir at \$14,105.10 and the \$10,000, and \$14,525, were all credited on our books here from the Pittsburgh office as charged to New York.

Q. Credited from Pittsburgh? A. Charged to New York, credited to the Pittsburgh office, and the explanation of that is sent or that the Oswego work was transferred to the Pittsburgh office, but the signatures, it was a government contract and the signatures were all from the New York office, and we collected the money in place of the Pittsburgh office. On August 27th, \$10,955.96, that is charged to New York office credited to Pittsburgh. That was a note of the Wichita Pipe Line Company that we collected in New York.

Senator Thompson.—Comptroller Prendergast has been fortunate to be elected to the republican national convention to which he goes tomorrow, and attends until the 16th of June, when he returns to the city, and it has been arranged that we will hear him here on the 19th of June on Monday, beginning at eleven o'clock sharp in the morning.

Mr. Quackenbush.—On what subject, the outcome of the convention?

Senator Thompson.—Details probably.

Mr. Quackenbush.—Will Mr. McAneny be called about the same time?

Senator Thompson.—Yes.

Mr. Shuster.—Have you finished with August? A. Yes. On September 4th, \$11,135.69. That was a check deposited in New

York and credited to the Pittsburgh account, a check from the aluminum company of America for work done at Potsdam, New York.

Q. The Aluminum Company of America? A. Yes, sir, for work done at Potsdam, New York. September 18, \$10,000, cash sent to Pittsburgh; September 29, \$12,000. Now, on September 15 credited to the Pittsburgh office was \$10,000, check on account of the Oswego job.

Q. On the Oswego job? A. Yes, sir. Now, then, there was the next entry is April 1, 1915, \$25,000; April 29, \$25,000; May 25, \$25,000; June 22, \$5,000; July 1, \$10,000. On July 20, it was sent back from Pittsburgh to New York, \$5,000. September 3, from New York to Pittsburgh \$7,500, and returned on September 13, \$15,000 from Pittsburgh to New York. That is all.

Q. All of the items that you have given here except those you have particularized as checks deposited in New York and credited to Pittsburgh, are cash transactions and represent moneys that were received by you from the Interborough contract? A. Not received. I said this morning it was all put in the business, yes.

Q. There is no way in which you can separate those from your record? A. No, sir.

Q. We gather from the memorandums in which you have testified are what you have designated heretofore as the Pittsburgh reports? A. Yes, sir.

Q. Can you show from these statements how these moneys were disbursed by the Pittsburgh office? A. Quite a large lot of it; I can show you that there was \$314,000 paid off on bills, bills payable, reduce that to the balance of the usual pay roll as far as we know and general business expense, mostly your weekly statements show the items.

Q. Is this one of the weekly statements? A. These are the regular statements.

Mr. Moss.—Do you object to showing us one of those weekly statements so that we may see the form of it? A. I will have to stand where I stood.

Q. Now, fair and square just show us one of those statements and I will give it right back to you. I would like to see the form of it. It will be without prejudice, Mr. Gillespie.

Mr. Quackenbush.— They have already seen the form of one.

Mr. Moss.— I want to see one now. Is this a statement in or out? A. Out? There are none out.

Mr. Moss.— All statements in? A. From Pittsburgh to New York; we don't keep any the other way.

Q. Are you able to state, Mr. Gillespie, by reference to these statements what the moneys were disbursed for in the Pittsburgh office in detail each item? A. \$314,000, well, if I went all through these things —

Q. The moneys which were sent to Pittsburgh, are you able to show how they were disbursed? A. I show the greatest part of them on that sheet there.

Q. The persons to whom they were paid? A. I gave you that.

Q. But that is your compilation of it. A. I have to tell you that that is the correct statement. That is all.

Q. You say that what you have handed us is a correct compilation of those statements, but my question is, are you able to tell by looking at the statements what moneys were paid and to whom — to the Pittsburgh office? I ask can you state it from those statements? A. Well, that is from this.

Mr. Moss.— Can you state it from those statements? A. I suppose I could.

Q. Can you answer that yes or no? A. It is all here, the cashier reports if he paid out \$15,000, it is here.

Q. Well, I request you, Mr. Gillespie, to exhibit now the reports from which you have testified when you gave us these figures.

Mr. Quackenbush.— I subject that declamation.

Mr. Moss.— Well, now, in the presence of the committee, you have referred to a lot of statements that are now under your left arm? A. Yes.

Q. And you have used them to refresh your recollection in stating the amount of money that you sent to Pittsburgh, and the amount of money that Pittsburgh sent back to New York? A. Yes, sir.

Q. Now, I ask you to hand to the committee for the inspection as exhibits the statements from which you testify.

Mr. Quackenbush.— The same declamation for the same reason.

Mr. Moss.— I ask the chairman to commit the witness to comply with the request.

The chairman so acts.

A. I respectfully decline under advice of counsel.

Mr. Moss.— For all the reasons heretofore stated by Mr. Quackenbush.

Mr. Shuster.— Those reports are true, aren't they? A. I believe them to be.

Mr. Shuster.— They are accurate? A. Oh, they balance up with our New York books.

Mr. Moss.— Well, they are conducted under a regular system and custom, and you rely upon them in conducting business.

Mr. Shuster.— You received them in due course of business? A. Yes.

Mr. Moss.— Mr. Chairman, I offer in evidence the package of reports that are in front of the witness.

Senator Thompson.— I think the Committee is ready to receive them, and willing.

Mr. Moss.— The Chairman, sitting next to the witness placed his hand upon the bundle of reports. Mr. Gillespie pushed his hand away and retained possession of the documents, and he withdrew the documents. The Committee fails to possess itself of the documents simply because physical force is necessary.

There are no further questions and we will excuse young Mr. Gillespie as well as his father.

Mr. Gillespie.— Thank you.

Senator Thompson.— These papers, Mr. Gillespie, show in detail the items of the expenditures from the Pittsburgh office of moneys that you forwarded to Pittsburgh? A. Yes, sir.

Witness.—WILLIAM H. REYNOLDS is duly sworn and testifies as follows:

Examination by Mr. Moss:

Q. Now, Mr. Reynolds, I understand you want to make some statements before you are questioned.

Mr. Moss.—In connection with this Gillespie statement, I want to extend this report to the record. (Report entered into evidence as Exhibit No. 1.)

Q. You have come here as a voluntary witness asking to be heard? A. Yes, sir.

Senator Thompson.—Do you waive immunity? (Witness waives immunity.) A. I have no further statement to make gentlemen, but what I have stated in the press yesterday, I never heard of any agreement.

Q. We don't all read the papers, you know? A. Well, it looks as if sometimes Senator, you are quoted in the papers and you ought to read some of the things that they put down as being said by you.

Q. If most of them were sinking fund commissioners, I wouldn't dare to disagree with them. They are all members of the sinking fund commission. A. I never heard, Mr. Counsel, anything of the agreement or any agreement between the New York Dock company in the city of New York until I read the paper yesterday with my name connected with it. I can't state that any too emphatically and I think it is an outrage that a man's reputation should be injured in this manner without more evidence than I read was produced here by certain witnesses that were put on the stand.

Q. Now, Mr. Reynolds, on that before you go any further, your name was mentioned by one witness, nobody knew he was going to mention your name, he mentioned your name in the connection in which it was stated, and it is on the record simply out of the mouth of one witness who said that he heard that Mr. Landstreet had mentioned your name. A. There was sufficient interference I think from the other witness's testimony that lead up to some one man's name being mentioned, and then my name was brought in by one man.



Q. Your name was not inferred to anybody by any witness untill it came out of the mouth of the witness that I have mentioned, and if there were inferences drawn from previous testimony, there were not such inferences that did not leave me without surprise when your name was mentioned by Mr. Landstreet. Now, if you think that the mention of your name in such a way as that does you an injury, why you are here to make your statement, and the Committee is giving you the privilege. A. I undoubtedly do think it injures, Mr. Counsel, and I made the statement in full that I never heard of any agreement until I read it in the newspapers yesterday between the New York Dock Company and the city of New York. I am here to answer any questions that you would like to ask on any of the testimony that was introduced here or anything that has been said by any of the witnesses that you have had.

Q. Now, when you speak of it being an outrage, that your name should be mentioned, why you must have that out with the witness who mentioned it. A. I undoubtedly will.

Q. It came out from him, and you must have it out with him, so far as an outrage is concerned and your testimony denying any connection with it is now upon the record and any one can read what you have said just as well as they can read the testimony of the other persons. Now, I don't know that I have any questions to ask of Senator Reynolds at this time bearing particularly upon this dock matter. It is all a new thing to me, but I would like to ask Mr. Reynolds if he is the same William H. Reynolds who is interested in Seaside Park? A. I don't know what you mean by Seaside Park. If you say Dreamland, and mean by Dreamland Park, yes, I am.

Q. And in the Martinville Railway? A. I have no interest in the Martinville Railroad whatever. The classification was purchased by the city, and I want to say here the Dreamland classification yard and the state barge canal were purchased from companies which I controlled before the present administration, under Mayor Gaynor's administration, in spite of the fact that one newspaper in particular has been lobbying that the railway classification yard was purchased under their administration it was not. Mayor Mitchel —

Senator Thompson.— Do they purchase these things before you yet a law through to make them legal? A. Well, no sir.

Senator Thompson.— Well, the Morrison Railway Act wasn't passed until 1915. A. I think it was 1915.

Senator Thompson.— The legislature of 1915 passed it. A. But the classification yard is not a railway proposition. It is a tract of ground immediately in the realm of the state by the barge canal terminal taken by the state.

Senator Thompson.— Well, it couldn't have been a legal situation until it passed the legislature. A. That is why I say I have no interest in the Martinville Railway proposition, and never had, although the papers have claimed that I have.

Mr. Moss.— Well, condemnation proceedings were begun in regard to the construction company before the act was passed, weren't they? A. I didn't catch your question.

Q. The condemnation proceedings were begun as to the first construction company before the act was passed, weren't they? A. Well, do you mean as to the state barge canal terminal? If you will allow me to give you the history. The commissioners appointed by Governor Hughes made a report to the legislature in 1912, recommending certain sites that the state could take if they saw fit for barge canal terminals that report was embodied in a volume and was sent to the legislature of 1911, I think, not 1912. In 1911 I purchased the Beatty property in South Brooklyn before the legislature acted on that report, and when the legislature acted on that report, submitting it to a vote of the people in the state at referendum for issuing nineteen million dollars for the purchase of these sites. This property I purchased before any votes or any referendum was submitted to the people of the State of New York so they could have made no conspiracy or nothing between me and the state, or no contract until after the state had had this election and the vote. I think that was the only amendment that was carried to the constitution in that election, and it was the following spring after the following legislature that the state took title to the state barge canal terminal.

Q. As to the classification yard, was condemnation proceedings

begun before the act was passed? A. There was none needed. The property was purchased and the title investigated immediately following the state barge canal terminal. I think about six months later.

Senator Thompson.— You had a claim pending in the court of claims didn't you? A. That is on the state barge canal. It is still there. It was argued before the court of appeals on declaration today.

Senator Thompson.— Were you interested in the claim? A. I owned the first construction company.

Senator Thompson.— And that was pending before the court of claims in January, 1915? A. Yes, sir.

Senator Thompson.— Did you know that they passed an act through the legislature very suddenly putting the court of claims re-establishing the court of claims, annulling the board of claims in January, 1913? A. I do.

Senator Thompson.— Do you know that it was said that the legislature — that it was on account of the pendency of the board of claims that this particular administration passed this action, and a grave injustice was done me when that statement was made? A. Pardon me.

Senator Thompson.— Well, I wanted your explanation of it because in the legislature the statement was made that this was the pending claim involving over a million dollars, and it was not best for the interests of the state to repeal the board of claims act, and establish the court of claims at once, so that this claim — particular claim could not be decided by the board of claims. A. Now, if you will allow me to give you the details.

Senator Thompson.— Yes, I will be glad to have it. A. The court of claims sent the question of title before Judge Hall, as referee. He decided that the first construction company had the lease of the title. The property appropriated by the state, but excluding the street. The court of claims gave me an award of seventy-five cents a square foot, in actual figures a million and eighty thousand dollars, for property on which I had a loan of

\$1,400,000 in five institutions in New York and Brooklyn, or in other words — Pardon me, I would like to complete while I have my train of thought.

Senator Thompson.— The members of the Committee would like to know those institutions. A. I am perfectly willing to give them to you in confidence — confidence I mean so as not to make them public, because I don't think it would be a proper thing to mention here institutions who have loaned this money.

We presented an argument before the court of claims that they allow the streets the title to the streets on a decision that had been rendered subsequently by the court of appeals on that street in Brooklyn, and that was the matter that was pending before the court of claims when this act that you mention was passed by the legislature, repealing the court of claims act and so the court of claims commission — we have since taken that to the Court of Appeals, and I have been carrying in the banks the loan of \$1,400,000 with six per cent. interest with an award standing me in the face of \$1,080,000 or \$220,000 less than I borrowed on this very problem. That was argued in the Court of Appeals on Tuesday, declaration day of this week.

I would like to say gentlemen, anything as to the classification yards. It has been stated in one of the daily papers that eighteen blocks of the state barge terminal is being taken from the first construction company in at an award if something like two million dollars will be made on the first construction company on \$1.30 square foot option price that I came to the city. As a matter of fact, Senator, the first construction company owns only five and a half blocks of that property — the eighteen is probably owned by fifty to seventy-five other owners and I would be very glad to accept \$800,000 for what they claim I can get two millions for, and that is covered by \$500,000 mortgage, so that is the situation and classification. And I don't believe that Dreamland, which was set aside by the Appellate Division would have been set aside unless it was due to the notoriety of the state by the tied up with this administration. I really believe my friendship with the Mayor was injured to that extent that there had been a prejudice.

Those are facts I am giving you in faith with my position today, and all these positions. I think my trouble has been that I

have been out in the open only in these states not surreptitiously, but with my name connected with them, and being a public man they have been attacked in that manner. And now on top of this action, this declaration, I don't think it is a nice position for a business man to be in. I made my money through development, gentlemen, I didn't make it any other way.

Senator Thompson.— Well, I am going to give you credit for coming before the Committee voluntarily.

Mr. Moss.— You say that this occurred in the prior administration; identify that? Who was comptroller? A. Mr. Gaynor.

Q. Who was President of the Board of Aldermen? A. Mr. Mitchel, part of the time, and afterwards he was Collector of the Court.

Q. Who was President of the Borough of Manhattan? A. Mr. McAneny.

Q. Did any of these gentlemen recommend the purchase of Dreamland? A. They did as a committee.

Q. Who did? A. Comptroller Prendergast of the Board of Aldermen, Mitchel, and Borough President, McAneny of the Committee.

Q. There was no dissenting vote? A. There was not.

Q. What did the condemnation Commission award you? A. \$1,006,000, I think with some odd hundred dollars, about one million six hundred or about forty-seven thousand dollars less than the option.

Q. How much did the court cut off of that award? A. That was affirmed by the judge of special term and then set aside by the Appellate Division and now has to go back to a new set of Commission that is appointed by the Public Commission.

Q. How much was cut off by decision? A. Absolutely set aside.

Q. Wasn't there a decision at first cutting off some portion of the award? A. In the special term, the original award I think was about a million and twenty-five thousand, and there was seventeen thousand cut off for the opening and closing of West State Street, making it as I said about a million and six thousand dollars.

Q. Didn't the Corporation Counsel charge that the award was five hundred thousand dollars, approximately? A. I wasn't present and I don't know what his grounds were, of course, the experts for the City and the experts for the Dreamland corporation were very far apart.

Q. What part of Dreamland did you retain? A. We retained the surf part, not at our suggestion but at the suggestion of the Cities Committee who did not want to take the surf on account of its value.

Q. Well, you retained the most valuable part? A. I don't agree that it is the most valuable part. It has been said by some people.

Q. You get a rental out of it don't you? A. Yes, sir.

Q. Big rental? A. Well, it is valued there are about fifteen lots running two hundred feet deep that I should judge would be worth \$450,000 and our rental, lease, taxes, probably are thirteen or fourteen thousand dollars a year.

Mr. Feinburg.—Is that all you get for those? A. Less the taxes, we get gross \$21,000.

I want to say here, counsel, that the Appellate Division in the same opinion gratified the boundary reward, claiming that with Fifth Street property fronting on West Fifth Street was worth a dollar—to be exact one dollar and twenty-five cents a square foot. That award affirmed and roughly, just for the purposes of explanation, Dreamland award was four dollars, we will say, and twenty-five cents a square foot, as made by the Commission.

Palmer's award was \$5.50 a square foot. I have since shown my counsel, Colonel Dykman, that of West Eighth Street, for which we we retaxed \$17,000 was cut through and the same price given for the property, that of the property fronting on West Eighth Street on both sides was figured at the same price, as the Palmer's award was affirmed and I think any real estate expert will admit that West Eighth Street with Dreamland was made that section of Coney Island elevated all that, West Fifth Street was only laid out on a man, it was never physically put through and along side of it nothing but this arid waste of sand, and at that time not even this free bathing pavilion was there, our award would have amounted to \$1,387,000, and Colonel Dykman was think-

ing of going over to Judge Miller and showing him what an error he had made in his report on that same basis of calculation.

Q. Was West Eighth Street closed by resolution? A. Yes, sir.

Q. When? A. I think about 1902 or 1903 when Comptroller Grimes controlled.

Q. By the Board of Estimate? A. That gave it to you. It gave us the subject to a resolution. We owned the street.

Q. It was a part of Dreamland? A. We made it a part of Dreamland. My argument was that we would increase the valuation by closing West State Street and the Commissioners were appointed, and we were assessed this very \$17,000 you mention.

Q. Are you interested in the Harlem Brooklyn Company? A. Never was no connection whatsoever.

Q. Are you interested with the realty associates? A. None whatever. Have no interest there.

Mr. Moss.—At this time I will extend to the record some documents in regard to this matter, some correspondence that Mr. Cederstrom had with Mr. Whitney.

*“September 30, 1915.*

“Travis H. Whitney, Esq.,

“Secretary.

“Dear Sir:

“Referring to my conversation with Mr. Harkness and Mr. Richard R. Rogers today, relative to the release by the trustees of the mortgage on certain property at the foot of Joralemon Street, Brooklyn, so that it may be sold at public auction at an upset figure of \$25,000, for which the expenses of the sale and the bid of \$25,000 is assured, with a provision that a pier must be erected over the tube:

“In answer to the question as to whether the part proposed to be released has any substantial value, I beg to state that I am of the opinion that the property acquired at the foot of Joralemon Street in condemnation proceedings, under present conditions may well be considered a liability, to the extent that it practically will require an immediate expenditure of at least \$100,000 for a concrete blanket, whereas the

sale at \$25,000 under the proposed terms, will obviate the necessity of this expenditure and insure the erection of a pier over the tunnel which, in the opinion of our engineers, will afford the best possible protection for the tubes.

"The owners of the abutting property, the New York Dock Company, are now razing Pier No. 19, which is located on the south side of the Joralemon Street tube, and are about to erect a new pier about 122 feet south of the tunnel. In the opinion of our engineers, this change in location of piers will necessitate more adequate protection for the Joralemon Street tunnel than is at present afforded by a mere earth covering, and it is estimated that a concrete blanket will cost about \$100,000.

"I have been in consultation with Mr. J. O. Nichols regarding this Joralemon Street matter as well as that at the foot of Montague Street and the foot of Clark Street, all of which are a part of this transaction.

"I have under preparation a more detail report, covering the entire proposition of the New York Dock Company, which I shall submit to you in a few days.

"Very truly yours,

"Sig. Cederstrom,

"Real Estate Expert."

SC/JJK

"October 7, 1915.

"Travis H. Whitney, Esq.,

"Secretary.

"Dear Sir:

"Supplementing my report to you dated September 30, 1915, relative to the Joralemon Street property, and referring to the attached communication dated September 28, 1915, together with copy of a letter dated August 25, 1915, from W. E. Halm, Esq., President of the New York Dock Company, to Hon. Edward E. McCall, Chairman, also copy of letter dated August 20, 1915, from Mr. Halm to Mr. Harkness, Assistant Counsel to the Commission, which were referred by you to me for report:

"I respectfully recommend the acceptance by the Com-



mission of the offer as proposed in the communications of the New York Dock Company.

“It is my opinion that the acceptance and consummation of the proposition of the New York Dock Company as a whole will result in the saving of at least 500,000 in the cost of rapid transit construction, and in addition thereto piers will be constructed over the tunnels at the foot of Clark Street, at the foot of Montague Street and at the foot of Joralemon Street without cost to the City. In the opinion of our engineers, the construction of piers over these tunnels would afford the best possible protection for the tubes.

“Pursuant to your instructions, I started negotiations with the New York Dock Company about a year ago for the acquisition of such easements and other rights as the City would require for the construction, operation and maintenance of rapid transit tubes at the foot of Clark Street, Brooklyn, with a view to reaching an equitable settlement by private purchase, and in the main to avoid all possibility of another such condemnation proceeding as obtained in the acquisition of certain property for rapid transit purposes at the foot of Joralemon Street, Brooklyn, which litigation extended over a period of eight years.

“The first proposition, which was submitted informally by the New York Dock Company was checked up as to cost by our engineers, when it was found that it would require an expenditure by the Commission of approximately \$1,000,000 for the purchase of the necessary easements and other rights required for the tubes at the foot of Clark Street.

“After a number of informal conferences with Mr. Halm and Mr. Hitchkiss of the New York Dock Company, a final figure of about \$500,000 was proposed by them as a settlement. I then went over the entire matter with Mr. Harkness and acting on his suggestion, I proposed to the New York Dock Company that they might acquire from the Commission the properties at the foot of Joralemon Street and at the foot of Montague Street and sell to the Commission an easement at the foot of Clark Street, each of the properties to

be subject to certain restrictions for the protection of the several tubes with result as proposed in the attached letters. letters.

“The proposal of the New York Dock Company, as embodied in their letters hereto attached, is, briefly: An offer to sell to the Commission for the sum of \$275,000 a permanent easement and such other rights between Furman Street and the pier head line of 1897, at the foot of Clark Street, Brooklyn, as may be necessary for the construction, maintenance and operation in perpetuity of rapid transit tubes at that point.

“Upon completion of the tubes, the New York Dock Company agrees to construct a pier over the tubes, the plans and construction of which are to be subject to the approval of the Commission.

“The New York Dock Company’s figure of \$275,000 is made conditionally, namely, that the Commission will cause to be sold at public auction as separate parcels, the excess City property at the foot of Montague Street and at the foot of Joralemon Street, Brooklyn, which have been acquired in condemnation proceedings for rapid transit purposes. The terms of the auction sale to be practically as follows:

“The New York Dock Company agrees to bid an upset figure of \$75,000 for the foot of Montague Street and an upset figure of \$25,000 for the foot of Joralemon Street. The terms of sale to be such that the Commission will retain easements and other rights as may be deemed necessary for the construction of rapid transit tubes at the foot of Montague Street and for the protection, maintenance and operation of the tubes in perpetuity in each of the properties.

“The Montague Street and Joralemon Street properties are also to be sold subject to recapture by the City at the amounts for which they are sold at public auction, plus the cost of improvements hereinafter made, less depreciation, provided the City should at any future time acquire by condemnation or otherwise, the water front between Atlantic Avenue and Fulton Street as a whole. The terms of sale are also to contain a provision that a pier shall be con-

structed over the tubes at the foot of Montague Street and at the foot of Joralemon Street within such period of time and in such manner as may be determined by the Commission, as will be stated in the terms of the sale by public auction.

"In recommending to the Commission the acceptance of the New York Dock Company's proposal, and in making the statement that it will cause a saving in construction of about \$500,000, I have taken into consideration among other things the following facts:

#### CLARK STREET.

"Relative to my recommendation for the purchase by the Commission at private sale for the sum of \$275,000 all such easements and other rights as may be necessary for the rapid transit tubes at the foot of Clark Street:

"The New York Dock Company offers to sell such rights as are required for the sum of \$275,000, provided the foot of Montague Street is offered at auction for \$75,000 and the foot of Joralemon Street is offered at auction for \$25,000.

"In a condemnation proceeding the award to the owners of this property as damages on account of the taking over of such necessary easements and other rights as the Commission has determined are required for subway construction at this point, in my judgment would amount to no less than \$450,000, in addition to the cost of the condemnation proceeding.

#### FOOT OF JORALEMON STREET CONDEMNATION PROCEEDINGS FOR RAPID TRANSIT PURPOSES.

"If the awards made by the Commissioners of Appraisal in the condemnation proceedings for the acquisition of the property for rapid transit purposes at the foot of Joralemon Street, which is similar in character to that at the foot of Clark Street, are to be considered, or are any criterion as to the awards for damages that may be made in a condemnation proceeding at the foot of Clark Street, the awards in the Clark Street taking would exceed considerably my estimate of \$450,000.

"In the Joralemon Street proceeding practically only land under water was acquired, the upland between Furman Street and the bulkhead is in the bed of Joralemon Street and in use as a street.

"At the foot of Clark Street between Furman Street and the bulkhead the upland is in private ownership and two 5-story warehouses are constructed on the land, all of which will be damaged by the construction of the tubes. It will also be necessary to acquire about \$50,000 additional square feet of land under water between the piers than was necessary to acquire at Joralemon Street.

"In the Joralemon Street procedure title vested in the City in June, 1904, and final awards for damages were made in June, 1912. There were two proceedings, the first an easement. In the second proceeding a fee of the property was secured. The final award in the fee proceeding in June, 1912, was \$264,000 with interest at 6 per cent. (\$53,592), making a total of \$317,592. The expert for the City testified before the Commissioners of appraisal in April, 1912, that the total damage to the property in this proceeding was \$126,700.

"The total amount of awards for damages in the Joralemon Street proceedings was \$416,500, interest at 6 per cent. (\$127,757.82), making a total of \$544,257.82 in addition to the cost of the proceedings, which was approximately \$15,000.

"In the event of the removal of a pier from its present location on either side of the tubes to be constructed at the foot of Clark Street, it is the opinion of our engineer that it will be necessary to construct a pier or a concrete blanket over the tubes, the cost of a concrete blanket being estimated at about \$100,000. Considering further the cost of building a pier and the necessity of acquiring additional property for same, I am of the opinion that it would be prohibitive from the Commission's standpoint and that the City is not in a financial condition at present to undertake it.

"The purchase by the Commission under the proposed terms will obviate the necessity of any additional expendi-

ture for the protection of the tubes and will insure the erection of a pier over the tunnel which, in the opinion of our engineers, will afford the best possible protection for the tubes.

"The New York Dock Company offers to sell easement in Clark Street for \$275,000.

"Will bid upset figure on Montague Street of \$75,000.

"Will bid upset figure on Joralemon Street of \$25,000.

"Net cost to the City not more than \$175,000, and in addition the tubes will be fully protected by the construction of piers over them.

"It is estimated by our engineers that if the City were to acquire the foot of Clark Street in condemnation proceedings for the sum of \$450,000, the protection of the tubes at the foot of the three streets with concrete blankets will cost \$300,000, making a total cost of \$750,000 as against the sum of \$175,000 by private settlement. In the opinion of our engineers, the construction of piers over the tube as a protection is far superior to concrete blankets and will entail no expense to the City, whereas the cost of concrete blankets would be \$300,000.

#### MONTAGUE STREET.

"Relative to my recommendation for the sale at public auction of the property at the foot of Montague Street, at an upset figures of \$75,000, subject to construction of rapid transit tubes and other restrictions:

"This property was acquired by condemnation proceedings for rapid transit tubes, and title was vested in the City February 8th, 1915. No awards have been made.

"There is a certain amount of upland (vacant property) in this parcel between Furman Street and the bulkhead line which has a substantial value. In order to make the land under water available for commercial purposes after the construction of the tubes, it would be necessary to deposit a concrete blanket over the tubes, the cost of which is estimated by our engineers to be \$100,000. I have grave doubts as to whether the cost of the blanket, in addition to the value of the upland could be obtained for the property after con-

struction, on account of the rapid transit tubes easement and other rights which it would be necessary to retain.

" In the event of the removal of a pier on either side of of the tube, as at present located, the conditions would be the same as has been stated with reference to Clark Street, and a pier or a concrete blanket would be necessary.

" It is my opinion that under the proposed terms of sale at \$75,000 the City will receive the full value of the property, and it will obviate the necessity of any additional expenditure for the protection of the tube, and insure the erection of a pier over the tunnel, which will afford the best possible protection for the tubes.

" Should the City at any time in the future acquire the water front between Atlantic Avenue and Fulton Street, the recapture clause in the terms of sale will enable the City to obtain the property at the same figure at which it is sold at auction, plus the cost of improvements, less depreciation.

#### JORALEMON STREET.

" Relative to my recommendation for the sale at auction of the property at the foot of Joralemon Street at upset price of \$25,000 subject to rapid transit easements and other restrictions:

" This property was acquired in condemnation proceedings for rapid transit tubes at a total cost of approximately \$559,008.91.

#### AWARDS MADE TO NEW YORK DOCK COMPANY FOR PROPERTY AT FOOT OF JORALEMON STREET, BROOKLYN, NEW YORK.

For lands at Joralemon and Furman Streets.

Brooklyn, permanently taken or acquired  
and rights, interests, easements and estates  
therein permanently extinguished:

Award . . . . .	\$30,500.00
Interest at 6 per cent., July 19, 1904, to August 27, 1912, 8 yrs. 1 mo., 8 days . . . . .	\$14,833.16
Total . . . . .	<hr/> \$45,333.16

For temporary damage to property at Joralemon and Furman Streets, Brooklyn caused by construction of the Brooklyn Manhattan Rapid Transit Railroad under said premises:

Award . . . . .	\$122,000.00
Interest at 6 per cent. July 19, 1904, to August 27, 1912, 8 yrs., 1 mo., 8 days. . . . .	59,332.66

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Total . . . . .	\$181,332.66
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For estate in fee, simple absolute to land under the water of the New York Dock Company at the foot of Joralemon Street, Brooklyn:

Award. . . . .	264,000.00
Interest at 6 per cent. from April 9, 1909, to August 27, 1912, 3 yrs., 4 mo., 18 days. . . . .	53,592.00

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Total . . . . .	\$317,592.00
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Awards	Interest
\$ 30,500.00	14,833.16
122,000.00	59,332.66
264,000.00	53,592.00

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Total. . . . .	\$416,500.00	\$127,757.82
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Total Awards . . . . .	\$416,500.00
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Total Interest . . . . .	127,757.82
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Awards and Interest. . . . .	\$544,257.82
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Disbursements in the Condemnation Proceedings were as follows: Total disbursements on account of bills taxed by the Supreme Court, in the matter of acquiring easements at Joralemon and Furman Streets, Brooklyn:

Year	Clerical Service	Special Service	Commissioners of Appraisal	Advertising	Total
1905. . . . .	.....	.....	.....	\$451.20	\$451.20
1906. . . . .	\$712.04	.....	.....	.....	712.04
1907. . . . .	796.10	.....	.....	.....	796.10
1908. . . . .	398.45	\$4,000.00	.....	.....	4,398.45

1911.....	660.20	.....	.....	.....	660.20
1913.....	163.80	1,500.00	1,200.00	.....	2,863.80
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Totals	\$2,730.59	\$5,500.00	\$1,200.00	\$451.20	\$9,881.79

Total disbursements on account of bills taxed by the Supreme Court, in the matter of acquiring Fee at Joralemon and Furman Streets, Brooklyn:

Year	Clerical Service	Special Service	Commissioners of Appraisal	Total
1909.....	\$656.65	.....	.....	\$656.65
1911.....	338.65	\$1,535.00	\$1,940.00	3,813.65
1913.....	.....	.....	400.00	400.00
<hr/>				
Total.....	\$995.30	\$1,535.00	\$2,340.00	\$4,869.30

"I am of the opinion that the surplus property at the foot of Joralemon Street under present conditions in the ownership of the City has practically no market or rental value and may well be considered a liability to the extent that it will require an immediate expenditure for additional protection of the tubes.

"Pier No. 18, located on the south side of the Joralemon Street tubes is now being rated. In the opinion of our engineers this will necessitate more adequate protection for the tubes than is at present afforded by a mere earth covering. The construction of a concrete blanket or a pier is recommended, the cost of a concrete blanket being estimated at \$100,000.

"The construction of a concrete blanket over the tubes now in operation at Joralemon Street is considered by our engineers more hazardous than the construction of a pier. In my opinion the building of a pier is prohibitive for the same reasons I have stated in connection with Clark Street.

"The sale at \$25,000 under the proposed terms will obviate the necessity of any additional expenditure for the protection of the tube and will insure the erection of a pier over the tunnel which, it has been stated, will afford the best possible protection for the tubes.

"Should the City at any future time acquire the water front from Atlantic Avenue to Fulton Street the recapture



clause in the terms of sale will enable the City to obtain the property at the same sum for which it is sold at auction, plus the cost of improvements, less depreciation.

#### PROPOSAL OF THE NEW YORK DOCK COMPANY FROM THE CITY TAXATION AND CIVIC STAND- POINT.

“ The property at the foot of Montague Street and at the foot of Joralemon Street is now in City ownership and as such is not taxable. The sale of these properties will restore them to the tax books of the City, and the property at the foot of Clark Street will remain on the tax books.

“ In order to carry out this agreement it will be necessary for the New York Dock Company to raze six old piers and to construct three modern piers, the cost of which is estimated by the New York Dock Company at over \$1,000,000. This expenditure and the fact that the acquisition of the properties at the foot of Montague Street and at the foot of Joralemon Street, and the retention of the property at the foot of Clark Street will reunite the properties of the New York Dock Company and permit the use of them as one unit, will increase its taxable value as well as the borrowing capacity of the City.

“ It is the policy of the City to acquire the water front at the earliest possible date. The Public Service Commission and the Commissioner of Docks will have full power to regulate the construction of the three new piers in such a manner that not only will they amply protect the tubes but will also be an adequate and logical improvement from the City's standpoint. At the same time, the removal of the six old piers will mean a considerable saving to the City, should the City at any future time elect to acquire them.

“ When the City acquires the water front from Atlantic Avenue to Fulton Street the recapture clause in the terms of sale will limit the price to be paid for the foot of Montague Street and the foot of Clark Street to the same amount for which it is sold at auction, plus the cost of improvements, less depreciation.

“At the foot of Clark Street, the Commission will only acquire such easements and other rights as are necessary for the rapid transit tubes.

“I am further of the opinion that every encouragement should be given the owners of water front for the improvement of their holdings as may be considered adequate and logical, and that the offer of the New York Dock Company is fair and reasonable and should be accepted.

“Very truly yours,

“Sig. Cederstrom,

“Real Estate Expert.”

SC/LEK

Encls.

Adjournment to June 3, 1916, at 11 A. M., June 3, 1916, adjourned until June 5, 1916.

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### JUNE 5, 1916.

The meeting was called to order at 11:30 A. M., Senator Thompson presiding.

Senator Thompson.—There was some misunderstanding this morning as to what witness the Committee would call today. It seems that Mr. Belmont of the Interborough understood that he was to be here today. We have had a conference in which we talked a lot of politics, because it seems that Mr. Belmont was asked to leave town this afternoon at four o'clock ostensibly to attend the convention. The Chairman of the Committee having heard that Mr. Belmont was a democrat, we took up the question right away as to why he wanted to go to Chicago so quickly. By various conferences with Mr. Nichols, Mr. Belmont and others we have arranged on the nomination of the candidate for president from all parts. It is all fixed now. So, Mr. Belmont desired to give us the benefit of his information on subjects that have been brought to the attention of this Committee before, and it has been arranged that he go on this morning. He has arranged to be here, and we will finish the examination at that time.

## Testimony of MR. AUGUST BELMONT:

Cross-examination by Mr. Frank B. Moss:

Q. Mr. Belmont, have you some statement that you would wish to make? A. Only to this extent — of course, I am prepared to answer any questions that you would wish to ask and to give you any information that I can. I will have to prepare myself to answer questions about the City Island Road, because that has been a matter that you inquired about, Mr. Moss.

Q. I would be very glad to have from your personal knowledge of the matter a statement of how that came about, what you did and what the result of it was. You can put it in your own way. A. I would rather not put it in that way, because it is a rather long story, but every detail of that came out.

Q. Suppose I ask you a few questions, Mr. Belmont? I particularly desire to have you unhampered by questions at this time, and until you get back from the convention I don't want to put any heavy matters upon your mind that might interfere with your doing a full duty to your country. I will ask you two or three questions and get the matter started and then I want you to feel perfectly free to discuss that City Island matter from your own view point.

You have been connected with Rapid Transit matters in New York a great many years, haven't you? A. Yes, sir.

Q. I think you helped to create the Interborough Company, did you not? A. Yes, sir.

Q. And before that you were in the Rapid Transit Subway Construction Company, weren't you? A. Yes, sir.

Q. I have understood that the Rapid Transit Subway Construction Company was organized originally to assist in supplying the bond that was necessary for Mr. McDonald under the contracts which he took, is that true? A. Oh, no, it was organized for the purpose of constructing the subway and taking McDonald's contract.

Q. Well, you did that McDonald contract, didn't you? A. Yes, and no. There was no legal assignment of it.

Q. Now, suppose we begin right there so as to furnish the foundation for your testimony? Would you kindly tell us your knowl-

edge of the McDonald contracts — how the McDonald contracts passed into the Rapid Transit Subway Construction Company and from that into the Interborough Rapid Transist Company? A. The Subway Construction Company, as I stated, was organized for the purpose of performing the contract which Mr. McDonald had signed, he neither having capital, nor as it turned out afterwards, having surety, he was promised surety, which we couldn't supply him. Consequently, the Construction Company was obliged in some way to provide the surety itself, and they found they couldn't do that, so that it was necessary that it should keep its relation with McDonald so far apart as to enable it to go on his bond. Of course, if the Construction Company had taken an assignment from Mc McDonald it couldn't have gone on his bond, you understand that perfectly. So that they had an agreement with Mr. McDonald, a formal agreement by which all the payments that were to be made to Mr. McDonald would be immediately paid over to the Construction Company, he remaining the legal contractor, the Construction Company agreeing to construct on the understanding that they would receive all the payments which were to be made to McDonald under the contract. That, you see, was just a sufficient opening for the Construction Company so that it could be accepted as the bondsman of Mr. McDonald. There wasn't a surety company on this work at all as bondsman. The bond of the Construction Company was the bond given for the performance of McDonald's contract, although as a matter of fact the Construction Company did all the work and McDonald was merely one of the paid officers of the Construction Company.

Q. Then, the inside of it was that the Construction Company bonded itself? A. Well, that is what Judge Van Blaricom says, but still it wasn't a fact legally. If that hadn't been done everybody recognized, the Rapid Transit Commission and the Comptroller, that, inasmuch as none of the surety companies would go into the bond, the construction of the subway was an impossibility.

Senator Thompson.— I never saw Mr. Belmont until about fifteen minutes ago, and really I don't know some of these things, but my understanding is that at that time there were some very potential financial interests in this city that evidently determined that the subway should not be built, even though the city had embarked upon the enterprise that Mr. Belmont undertook to con-

struct the subway. That is my information. A. That is true, but the reason that those interests were opposed to the building of the subway were due to commercial reasons and not founded on any prejudice or any desire of anybody. It was believed at that time that the subway would pay. They had a very careful report made on the subject by experts and that report stated to them that the construction of the subway as a piece of construction would be profitable, but as an operation it would be unprofitable. Well, it proved the reverse. The construction cost a great deal more than the \$35,000,000. The equipment which was estimated at about an \$8,000,000 cost, as you remember, cost over \$23,000,000. That, with the addition of certain items would have carried the cost to over \$25,000,000, or very nearly \$25,000,000. It was simply an error of judgment, so that the hostility was only that which any interest might have on anything they might consider would possibly affect their property. Mr. Thompson's idea might be that there was a hostility which had a proper foundation and was perfectly justified, and, as was brought out in this suit, some of the best financiers didn't think it would be profitable. It was a rather difficult thing to undertake.

Senator Thompson.—Wasn't there an opposition on the part of some people to permitting the city to construct any transportation line? A. I don't know — that wasn't proposed at that time. The agitation for municipal operation followed the beginning of that. This was municipal construction.

Senator Thompson.—My idea wasn't their opposition to that and wasn't the opposition or the attempt to prevent the financing of the construction — wasn't that somewhat because there was a fundamental opposition permitting the city to construct and own the transportation lines? A. I think not, no. There is nothing to warrant that. The question of Rapid Transit has been before this community for over twenty years, and under the leadership of the final chairman of the Rapid Transit bureau that has been taken up. The method under which municipal construction was established — that was the contract under which Mr. McDonald was to work — that was municipal construction; that is to say that the contract was with private individuals to construct the subway with public money. It wasn't public credit which was loaned

to private individuals to construct the subway, and the operation of which at the same time had to be contracted for by the same contractor, and that was private operation. Municipal operation hadn't been agitated in the city at that time at all, but it was in the form of a threat, because in the event of a private interest being unable to operate it, or in the event of being unable to carry out the contract and construct the subway, it all fell into the hands of the city, and they could either relet it to a new lessee or they could operate it themselves. It is so provided in the agreement, and it is so provided today. If the present lessees should fail to carry out their agreement with the city, should fail to pay the interest or the sureties fail to meet their obligations, the city would become possessed of that system. You can, therefore, well understand that if we failed that that meant the municipal operation would be a serious menace to all transportation interests in the city. That subject was thrashed out afterwards, and it even became the subject of an agitation here at the elections, and the law, as you remember, was amended, and the city for a time was prohibited to construct anything; they were compelled to do it entirely through private enterprise. That couldn't be carried out. The Ellsworth Bill was passed and the Ellsworth Bill stood on the statute books for several years, and it was not operative, because nothing could be done with it. They proved by a process of elimination that that was impossible, that it couldn't be done. And then came the various efforts which have led up to the present condition. The function of the Construction Company was in the beginning to build the subway and to undertake its operation if necessary. It was started under limited capital, then the large capital required followed. As you perhaps know the contract for the operation was a mere contract, but in all it was necessary before the construction had gone very far and the capital had been provided, that there should be some certainty as to who should operate the road and how, and it could only be operated provided the Construction Company, which existed then, or Mr. McDonald could provide a franchise. It never occurred to any one connected with the enterprise that the legislature wouldn't promptly grant a franchise for the operation of the subway, and Mr. Wickersham, as counsel of the company, drew a bill and introduced it into the legislature to provide a franchise for the operation of this road,

and the legislature wouldn't pass it. Money had been subscribed but a great deal more was required, not only the capital which had been put into the Interborough Construction Company, but they had to issue notes also. It was quite evident that this enterprise was going to cost instead of \$35,000,000 more in the neighborhood of \$60,000,000 or \$70,000,000, and then we began to cast about for a franchise, and it was discovered in the shape of the City Island Road — a franchise, not a railroad. That is a legal railroad, but it didn't make any difference whether it was a corporation operating successfully or not, what we needed was a franchise.

Were you interested with McDonald, or in McDonald when he made his application and got his contract? Did you have an interest with McDonald at the time that he got his contract? A. Oh, no. He put in his bid.

Q. Had you any interest in him then? A. After he had put in his bid?

Q. Before he had put in his bid? A. No.

Q. Did you know him before that time? A. No, I did not.

Q. Who did you understand was interested with or in with Mr. McDonald at the time he made his bid? A. There was nobody that I know of. He was a contractor of prominence. He had gone over the figures and thought that he could interest us.

Q. You think he put his bid in without consultation or confidence with any other interests? A. I think so.

Q. To the best of your information? A. So far as I know. As to whether he talked with people to see whether he would be able to secure capital or not, I have no doubt he did.

Q. Have you any information on that subject? A. No, I have not. He had large contracts with people of prominence.

Q. How soon after he made his bid did you become interested in it? I can't tell you any matter of days. The bids had been called for and he put in his bid and then came to me with Mr. Friedman, and then I saw him.

Q. Did he see Friedman before he saw you? A. I imagine so.

Q. So Friedman brought you and him together? A. Yes.

Q. Wasn't it originally for the purpose of supplying the bond for him? A. No. He had already consulted the various bonding

companies and they had promised him the bond. He was quite satisfied that he could get it.

Q. Well, then, was the question to get capital? A. Yes, to get backing.

Q. And when did you become aware of the fact that the bonding companies would bond him? A. After I told him that I would undertake the business. I didn't expect that difficulty, but when the difficulty came it was solved in the manner which I have explained to you. We expected to get bonds.

Q. When you began to organize this subway construction company, was he to receive a share in that company? A. Yes.

Q. And did he receive it? A. Yes.

Q. So arrangement was made for the proportion, and each received the proportion agreed upon? A. Yes, exactly.

Q. Did other persons come in to back him beside you and Friedman? A. Other persons joined in providing capital, but that was all done under my direction.

Q. Who were the other persons? A. I don't recall their names. I don't think that is pertinent, who was interested. I have furnished all that in detail and it was sixteen years ago.

Q. I only want what is easy to your recollection today. If we want anything more specific we will give you notice so you can dig it up. A. There were other parties interested from the very outset and as we passed from one phase of it to the other these parties added to their investment until it finally grew into the completed fund.

Q. Now, you had reached a point where you were looking about for a railroad company with a franchise, and you spoke of this City Island Railroad. You may proceed from that point if you desire. A. It has been so misrepresented that I would like, with your permission, to make a record of the statement which I have prepared. The criticism is that my firm received 15,000 shares of stock said to be of Interborough stock, said to be in payment of this railroad.

Q. And it was said that this stock had gone as high as 240? A. That wasn't a fact at all.

Q. There was 15,000 shares of stock, Interborough, which was worth at least \$200 a share—that would be \$3,000,000. A. Not at that time, and it wasn't given for this City Island Road.



This City Island Road was dedicated to the use of the enterprise, it being among other things. That was in 1902. This franchise was indispensable, it was the only franchise within the limits of the state, and whether it included equipment was immaterial. Its use was to enable this company to operate, without which it couldn't do so unless the legislature gave it a franchise, which it did.

Q. It proved that the franchise of the city land was not necessary, but it was thought to be necessary at the time it was taken? A. Yes, sir.

Q. Now, Mr. Belmont, you go on and make your statement about that in your own way, and when you have made that, I may think of some questions to ask. A. I felt that it wasn't necessary really to investigate this subject at this investigation inasmuch as the records were all open to you. I have prepared this statement:

The substantial value of the City Island and Pelham Park Railroad Company property was not its physical assets but its franchise, which when it was acquired and when it was dedicated to the operating Subway Company was of a value in excess of the actual value or of the par value of the 15,000 shares of stock received by the firm of August Belmont & Co.

It was so regarded by my associates at the time of such dedication, in the early part of 1902; and on the trial of the case of *Continental Securities Company v. Belmont*, it was judicially determined that this was the fact and that the transaction was commendable, wholly free not only from any taint of fraud, but of even criticism. And it may be added that this value would have been attributable to the shares of the City Island and Pelham Park Railroad Company if it had had no physical assets, had not even been in operation but had had merely a franchise authorizing it to operate a railroad within the County of New York.

In view of the insufficient testimony taken by the Committee on the subject, I wish that the Case on Appeal, including the Findings of Fact and Conclusions of Law and the opinion of Mr. Justice Van Sicten, and also the opinion of the Court at the Appellate Division, should be made part of the records of the testimony taken before your Investigating Committee, to the end that you may have an accurate history of the true relation of my firm and of myself to this enterprise.

Every circumstance concerning my transfer of the ownership of the City Island and Pelham Park Railways to the Interborough Rapid Transit Company has been the subject of judicial scrutiny, in the case of *Continental Securities Co. v. August Belmont, Interborough Rapid Transit Company et al.* After a trial which lasted five days, Mr. Justice Van Sieten dismissed on the merits both the complaint and all the charges of fraud, collusion, extortion and illegality which it contained (83 Misc. 340). This decision has since been unanimously affirmed by the Appellate Division (168 App. Div. 483), and under the law that decision constitutes a conclusive and final determination of the facts.

The opinions of the Special Term (Mr. Justice Van Sieten) and of the Appellate Division, go elaborately into the history and development of the subway and the financial transactions connected therewith, and I make them and the decision and judgment part of this statement and record.

The Appellate Division, in its opinion, concludes its investigation of the facts with the following statement:

“A full investigation of all the facts and circumstances in the trial at Special Term has resulted in findings by the Trial Court which negative fraud or bad faith, and the charges of exaction of an extortionate bonus by Belmont & Co. With these findings we agree.”

The decision establishes the fact that no solution had been found for the extraordinary problems presented by Rapid Transit conditions in this City prior to the year 1900, when John B. McDonald appeared and became a successful bidder for the construction and operation of the subway. Concerning him, Mr. Justice Van Sieten says:

“It appears, however, that while the action of said McDonald was heroic in adopting the subway waif, still he had neither the money nor the financial standing to maintain and support it and was compelled to look to others for the fulfillment of his contract. Said McDonald was unable to meet the requirements called for by his contract with the city, and, after certain extensions thereof, the defendant Belmont appeared and induced others to join with him with sufficient

financial standing and faith in the enterprise to proceed with the work."

The opinion of the Appellate Division then continues the narrative as follows:

"In the latter part of 1900 the excavation for the subway had been so well started that it was considered seasonable to form the operating company which should equip the finished subway and operate its trains. The Rapid Transit Act, however, did not authorize the formation of such a corporation. Counsel agreed that such operation must be undertaken by a railroad corporation having or operating a railway in whole or in part within New York City. The legislature was applied to for an act to amend the Railroad Law so as to permit forming such a corporation. But such a remedial statute was not passed. It then became necessary to acquire without delay an existing railroad corporation, qualified to meet this situation, so that it might be the lessee of the new subway system. On account of the opposition of other surface systems, this would necessarily have to be arranged with secrecy and dispatch. Two companies operating railroads in New York City — the City Island Railroad Company and the Pelham Park Railroad Company — were deemed available, and apparently were the only lines which Belmont & Co. could obtain for this purpose. Accordingly, Belmont & Co. proceeded to gather up the stock and bonds outstanding of these companies. For an outlay of about \$270,000 they gradually purchased over ninety-five per cent. of the stock of the two companies and control of the outstanding bonds.

"On December 16, 1901, a subscribers' agreement was entered into by the shareholders of the construction company, which recited the prior agreements for the building of the subway under the McDonald bid and contract. \* \* \*

"In contemplation of having to obtain an existing railroad, the bankers were further authorized: 'To acquire stock of any corporation which may be necessary or useful in connection with the formation of the Operating Company, on such terms as the Bankers may approve and to make or to cause to be made payments therefor in the shares of the Operating

Company or in the proceeds of the sale of such shares; and the Bankers are specifically authorized and empowered themselves to purchase any stock of such corporation or corporations, and after such purchase, without accountability in respect thereof, to sell the same to the Operating Company for such price as they may deem reasonable and proper.'

"After this agreement, Belmont & Co. acquired some other lots of stock in the City Island and Pelham Park Railroad Companies. About January 8, 1902, Belmont & Co., acting under this subscribers' agreement, turned over for this organization, not yet incorporated, their holdings of these railroad stocks and securities, which they had so acquired, and took a participation receipt for 15,000 shares of the par value of \$1,500,000 in the proposed operating company when it should be organized. In their stock register, by entry then made, it was stated that this stock was to be issued for the purchase of stock of the City Island and Pelham Park Companies, and for other considerations and services.

"The trial court has found as a fact that such stock and bonds were dedicated for the purposes of this enterprise; that the certificate was issued in the honest and reasonable belief by Belmont & Co. that for said purposes such stocks and securities were fairly and reasonably worth the amount of stock in the operating company to be delivered to Belmont & Co. when it should be issued; also that for this object the stock and securities, with the services of Belmont & Co., had had a value to the enterprise equal to, or in excess of, the par value of the participation certificate for the 15,000 shares of the new company; that Belmont & Co. were not to be otherwise compensated for said services contemplated by the subscribers and associates' agreements of December, 1901."

Concerning the essential part which these Pelham Park and City Island franchises played in the development of the subway enterprise, and concerning the events which succeeded their dedication by August Belmont & Co. to the enterprise, Mr. Justice Van Sicken said:

"It may be conceded that in view of the refusal of the legislature in 1901 to pass an amendment enabling the or-

ganization of an operating company, the possession of the Pelham Park and City Island charters was of great value; and it appears that at the assembling of the legislature of 1902, a similar form of opposition manifested itself. Thereupon it appears that Mr. Belmont, by diplomacy or influence, political or otherwise, was able to procure a withdrawal or cessation of the opposition or hostility to the legislature enactment desired; and in April, 1902, the act was amended so as to permit the organization of the Interborough Rapid Transit Company, and thereafter and on or about May 14, 1902, a charter was granted it. Theretofore and in January, 1902, August Belmont & Co., with the knowledge of the directors of the construction company and others, dedicated to the subway enterprise the City Island and Pelham Park Charters in consideration of the issuance to them of a participating certificate for 15,000 shares of the operating company to be formed, and included therein his right to compensation for creating the enterprise, the amalgamation of the respective interests into a single property, including the cost of securing the City Island and Pelham Park Railroad Companies' securities, amounting to some \$272,000, and the security of profits of the seventy-five-year lease. Such dedication or offer was an entirety and so understood by all parties in interest. Said 15,000 shares of the stock of the operating company to be formed were necessarily to be issued at par, but it must be manifest the real value thereof depended and was contingent upon the success of the enterprise. Of said 15,000 shares, no one, other than those connected with August Belmont & Co., received any number, except said McDonald, who received 1,000 shares in recognition of his assistance to August Belmont & Co. and to the enterprise."

Concerning the transfer of the ownership of these two railroad companies to the Interborough Rapid Transit, the Appellate Division said:

"After it (the Interborough Rapid Transit Company) had been so organized, and the directors had been named, followed by certain exchanges of participation certificates, Messrs. Belmont & Co. on May fourteenth wrote to the Inter-

borough Company, offering to exchange these holdings of the City Island and Pelham Park Companies for \$1,500,000 stock in the Interborough Company, 'said last mentioned sum also to cover all compensation to us for our services in procuring the assignment of the contract and interests as above stated, and the sale and transfer of the stock of Rapid Transit Subway Construction Company, and the said subscriptions.'

"This offer was accepted at a meeting of the Board of Directors, in which Belmont & Co., did not participate, and the certificate so delivered to Belmont & Co., which transaction of May 14, 1902, the Interborough Company has never disaffirmed."

The nature of some of the difficulties with which rapid transit had to contend at that time, were stated by Mr. William Barclay Parsons in his testimony, as follows:

"That brought the Commission down to about 1897, at which time the Commission practically had no friends. They were opposed by all the traction interests and the adverse decision of the Appellate Division in regard to the plans, and the Commission almost suspended its labors."

Concerning the considerations which led all those interested with August Belmont & Co., in the enterprise to approve the issue of the participation certificate for 15,000 shares to cover the transfer of these essential franchises to the subway enterprise, and the payment to August Belmont & Company of adequate compensation for their services pursuant to the agreement of December 16, 1901, executed by all the interested parties, Mr. Adrian Iselin testified:

"Mr. Belmont staked his name and the reputation of his firm in backing up the enterprise. Many people thought it would not be successful at the time, and he incurred, in my opinion, a great risk, for which he received a very moderate compensation."

The court has expressly found that the 15,000 shares were issued to August Belmont & Company for ample consideration;

that the properties and moneys for which the capital stock of the Interborough Rapid Transit Company was issued were fairly and reasonably worth a sum at least equal to the par value thereof, and everyone knows that today the properties so transferred are worth many times the amount of the stock then issued for them.

To New York City, the subway has brought inestimable blessings. It has added billions to the realty values; has enormously stimulated business and commerce; has rendered accessible outlying places of residence and enjoyment; has become a daily necessity to millions of people; and has accomplished its great services without marring the streets or detracting from the beauty or health of the City.

What this enterprise and the part of August Belmont & Co., in it meant to the public of New York was thus expressed by Mr. Orr, the Chairman of the Rapid Transit Board, in the ceremonies upon the opening of the subway in October, 1904:

“Nor do I wish to dwell upon the difficulties we encountered at the outset in attracting to this method of civic transit then identified with municipal passenger transportation, or with railroad enterprise, or of capitalists seeking investment, many of whom even declined to examine our plans and specifications, and, *with a single notable exception*, freely expressed the opinion that failure would be the outcome of our efforts; and that like difficulties will not again be encountered in the future prosecution of subway development. \* \* \*

“In conclusion I beg the privilege of mentioning a few names in connection with this subway enterprise which I trust New York will always hold in grateful remembrance.

“\* \* \* As long as this subway is made to render service to the people of New York, the Chamber of Commerce, Abraham S. Hewitt, John B. McDonald, *August Belmont* and William Barclay Parsons should be held in remembrance as household words.”

## AFTERNOON.

Th meeting was called to order at 2:45 p. m., Senator Thompson presiding.

Testimony of Mr. T. A. Gillespie, examination by Mr. Moss.

Q. We were talking privately, Mr. Gillespie, about paint used in the third-tracking. About how much paint did you use? A. Well, I told you the other day about \$40,000 worth of the Interborough paint and about \$10,000 worth of Nobrac.

Q. From whom did you get the Nobrac? A. Patterson-Sargent Company.

Q. How much did you pay for that? A. \$1.25.

Q. How much Interborough paint did you use, \$40,000 worth? A. Yes, sir.

Q. How much did you pay for that? A. It would average about the same price — \$1.25, possibly a little less than that. The way they billed it was the price of the ingredients, the market price of the ingredients, and they didn't add anything for mixing it. They have been using that paint sine 1887, and found it was very satisfactory. They simply buy the ingredients, which is the cheapest way for the railroad Company to do and then mix it themselves. What they did with us was to sell us the ingredients at the market price and no charge for mixing.

Q. Who mixed it? A. The Interborough.

Q. Was it billed from the Interborough Rapid Transit Company? A. I think so, yes, sir.

Q. Well, then, it averaged about the same price that you paid the Patterson-Sargent Company, who are dealers? A. Yes, sir.

Q. Was the Patterson-Sargent paint used in the same way that the Interborough paint was used? A. Well, the Patterson-Sargent paint was the same paint that was put on at the fabricating plant, and we simply used that to enther touch-up spots which had been roughened in transit or spots under the decking which hadn't been taken care of before the decking was put down.

Q. Did you consider that Nobrac paint as good as the Interborough? A. I imagine Interborough is a good deal better. I



don't know. They have had very good luck with it. I understand it is customary for all big railroad companies to mix their own paint — to buy the ingredients, the best they can get, and make the mixture themselves.

Q. Who suggested to you that you get paint from the Interborough Company? A. Well, the reason we bought the paint from the Interborough Company was because they were painting the old structure at the time and they wanted the new structure to be the same.

Q. Did you suggest it, or did they suggest it? A. I don't know. I imagine they suggested it.

Q. Did you get your fifteen per cent. on that? A. Just the same as on Nobrac.

Q. That's all, Mr. Gillespie.

Testimony of Mr. Alfred Craven, examination by Mr. Frank B. Moss:

Q. I asked you to bring, Mr. Craven, what records you had to show this matter of the crushed stone that was brought from the Upper Hudson Stone Company for ballast, you know the matter I refer to. I will read your letter of June 2d, to myself, into evidence:

Q. When the matter was first advertised there was a crushing strength of 12,000 pounds, and the lowest bidder was Calvin Tompkins, do you recall that? A. I do.

Q. Now, Mr. Tompkins testified here that, having obtained the lowest bid, a considerable sum of money, the business was readvertised, and a new crushing strength was inserted in the new advertisement, which was only just about 800 pounds greater than the extreme tension strength of his stone. Will you tell us, please, the circumstances of that readvertisement — the reason for it? A. When we received the bid originally the requirement of our contract was 12,000 pounds crushing strength. There were other requirements in the specifications to the effect that the quarry must be approved by the Chief Engineer. When the bid was received, after looking into the matter very carefully, I concluded that the Tompkins cove stone was not a satisfactory stone to be used in the subways. I went into the matter very carefully.

Q. Can you state the reasons? A. Because it was not the

proper kind of stone. It was not strong enough. It was not suitable stone; it varied largely in character. Some of it was good and some of it was very poor.

Q. (By Mr. Frank Smith) Will you please tell us the difference in that stone as against the stone that was sufficient in quality and character? A. Well, in the crushing strength of the stone and in other respects.

Q. (By Mr. Moss) In the crushing quality of the stone how did that stone differ from the stone you accepted? A. Why that is much higher.

Q. Have you got a report on that? A. Yes, I have. The compression tests of limestone for ballast: Out of six samples the first sample was 30,760 (This was for 1 inch cubes) the second was 33,200, the third was 24,150, the fourth was 29,120, the fifth was 30,700 and the sixth 20,790.

Q. What did you demand in your advertisement for bidding? A. 12,000.

Q. And each of these was how much above the demand of the bid? A. Well, they were almost double—about double; that is, the rejected quarry was double the amount demanded in the bill.

Q. On what did you base the demand in your bid? A. On the general specification that has been used in supplying ballast to the Pennsylvania Railroad. I don't know of any specifications that required more than 12,000 pounds, at that time.

Q. And the rejected quarry had 100 per cent. excess? A. Nearly so—what I read.

Q. You did reject it for some reason? A. I did.

Q. And why? A. Because it was not suitable stone. The quarry was not a suitable one to get uniform stone from to be used in subway work.

Q. Did you send your inspectors to the quarry? A. I did.

Q. Did they investigate the quarry in its various phases? A. They did.

Q. And its location for different characters of stone? A. They did.

Q. Did they find any stone less than 12,000? A. I think they did.

Q. Where is your report that they did? A. I will read the report of the inspector, Mr. Lucas.

Q. What is his position in the Public Service? A. He is the general inspector of materials for the Public Service Commission.

Q. When was the report made? A. This report was made on August 17, 1915.

Q. When was the rejection made? A. It was made subsequent to that, I don't know just when. The bids were received originally on August 4; then we made this investigation before I made my recommendation for the rejection of the stone on August 11. The inspection was made and the new bids were asked for on September 10. It was between that time—those periods. Mr. Lucas reports the quality of stone variable and not uniform. I shall read Mr. Lucas' report :

“ August 17, 1915.

“ Alfred Craven, Esq.,

“ Chief Engineer.

“ Dear Sir :

“ Attached please find additional reports of test of lime stone for track ballast. The samples on which the tests were made represented approximately the best quality of material in each quarry. The general run of the quarry, however, will be very nearly the same as the samples selected, as a large portion of each quarry is of uniform quality. The stone in the Tomkins Cove quarry is more variable than the stone in the Upper Hudson Co.'s quarry, and in some places it is unsuitable for our purposes. The Tomkins Cove Co. recognizes this variation, however, and do not attempt to market improper material. The main body of their quarry is of material which is closely represented by the samples.

“ Respectfully yours,

#### ATTACHED REPORTS FOLLOW :

*August 11, 1916.*

#### Absorption and Specific Gravity Tests of Limestone for Ballast.

	Absorption of Water	Weight per Cu. Ft.
Tomkins Cove Blue Stone....	0.19%	170 lbs.
Tomkins Cove White Stone..	0.50%	172 lbs.
Upper Hudson Stone Co.....	0.16%	180 lbs.

Field Stone of 1:2:4 Concrete in 8x16 inch cylinders with Limestone and trap rock aggregates.

	25 Days	No. Tests	90 Days	No. of
	Av. Lb.	Represent-	Av. Lb.	Tests
	Per Sq.	ed in Av.	Per Sq.	rep'd
	In.		In.	in Av.
Upper Hudson Stone Co. Dolomite..	1760	8	1980	8
Hudson River Trap Rock.....	1570	27	1910	23
Tomkins Cove Limestone.....	1490	5	1830	5

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Issued *June* 10, 1912.

Abstract from "The Physical Testing of Rock," by Albert T. Goldbeck, Testing Engineer, office of Public Roads, and Frank H. Jackson, Jr., Assistant, office of Public Roads, U. S. Dept. of Agriculture.

Table 3.—Results of laboratory tests on road-building materials classified according to location.

## NEW YORK.

No.	Town or City	County	Name	Weight (lb. per cubic ft)	Absorption (lb. per cubic ft)	Per cent of wear	French coefficient	Hardness	Toughness	Cementing value
1327.....	Clinton Point	Dutchess	Dolomitic Sandstone	175	.21	...	....	17.5	19	35
4960.....	Stonsco	Dutchess	Dolomitic marble	175	.16	2.3	17.5	16.7	7	20
45.....	Tomkins Cove	Rockland	Siliceous limestone	175	...	5.1	7.8	....	..	..
49.....	Haverstraw	Rockland	Diabase	...	...	2.7	14.9	....	..	..
95.....	Rockland Lake	Rockland	Diabase	...	...	2.3	17.8	....	..	..
127.....	Tomkins Cove	Rockland	Limestone	175	...	6.3	6.3	....	..	..
470.....	Tomkins Cove	Rockland	Limestone	168	.28	5.9	6.7	....	..	..

Where blank test not made.

## COMPRESSION TESTS OF LIMESTONE FOR BALLAST.

Tomkins Cove Stone 1 inch cubes selected and tested by P. S. C. Laboratory.

Specimen No.	Coal	Weight in Grams	Strength No. Sq. In.
1.....	Blue	47.85	30,760
2.....	Blue	47.85	33,200
3.....	Blue	48.15	24,150
4.....	White	47.00	29,120
5.....	White	47.70	30,700
6.....	White	47.85	20,790
			<hr/>
			Av..... 28,120

Tomkins Cove Stone 2 inch cubes selected and tested by P. S. C. Laboratory.

Specimen No.	Coal	Weight in Grams	Strength No. Sq. In.
A.....	Blue	367.5	16,123
B.....	Blue	353.5	13,638
C.....	Blue	369.0	24,183
D.....	White	360.5	18,255
			<hr/>
			Av..... 18,050

A 2-inch cube, selected by the company several years ago and tested carried a load of 17,250 lbs. sq. in. without breaking.

Upper Hudson Stone Co. Cedarcliff Plant 1-inch selected and tested by P. S. C. Laboratory.

Specimen No.	Coal	Weight in Grams	Strength No. Sq. In.
7.....	Blue	47.45	41,500
8.....	Blue	48.10	36,750
9.....	Blue	47.30	33,000
			<hr/>
			Av..... 37,080

Upper Hudson 1-inch cubes tested by Dr. Charles F. McKenna for the Company.

Strength No. Sq. In.
32,400
36,600
<hr/>
Av..... 34,500

## RESULTS OF ABRASION TESTS.

Public Service Commission Marks	C.	T. B.	T. W.
Initial Weight of Charge in Grams ..	5004	5002	5001
Number of pieces in charge .....	53	52	54
Per cent loss by abrasion .....	2.3	3.0	3.5
French Coefficient of wear .....	17.4	13.3	11.4

In accordance with the instructions of your Mr. Goodwin; I am forwarding to you enclosed a bill in duplicate covering services rendered in connection with the above tests and report on the same.

With kindest regards and best wishes for success, I remain at your service.

Sincerely yours,

(Signed) ARTHUR H. BLANCHARD

Eplanatory Note: The mark "C" indicated Upper Hudson Stone Co., stone from Cedar Cliff.

. The mark "TB" indicated Tomkins Cove Stone of blue color.

The mark "TW" indicated Tomkins Cove Stone of white color.

Mr. Craven: (At conclusion of reading of reports.) That is stone that is used subject to water; it becomes soft and falls to pieces.

Q. (By Mr. Moss) Doesn't that indicate that the stone can be used for subway purposes? A. No, it does not.

Q. Just let us go back; that is the result of the investigation of the quarry? A. Yes, sir.

Q. Is there any report that there was not sufficient good quality of stone to fulfill the contract made by Tomkins? A. Yes, that was referred to.

Q. He examined the Tomkins stone where it was used and it was in good condition, is that what he says? A. Yes.

Q. You recognize that that report that you have read is entirely technical? A. It is in a way.

Q. Coming right down to the proposition of this contract, what investigation did you make to find out whether or not this quarry was capable of producing the quantity of stone that you required under the contract for subway purposes, which was good enough

and which stood the 12,000-pound test demanded by the specifications? A. Mr. Lucas and Mr. Bailey made that examination and they can tell you about it.

Q. You know nothing about it personally? A. Only from their reports to me.

Q. You know nothing about it personally? A. I did not personally examine the quarry. The only thing I know about personally is the samples of stone that were brought to my office.

Q. And each of those stood eighty to one hundred per cent excess. A. No.

Q. Well what? A. The tests that we made were on one-inch cubes.

Q. And they stood from eighty to one hundred per cent excess? A. Yes. The next tests we made were on two-inch cubes. It is noticeable in that stone—in the dark stone; the blue stone—that it has these little white seams in it, and there is a large amount of this white stone in the quarry. So in making the tests on the larger cubes we developed the following conditions: One test 16,123.

Q. That is excess, isn't it? A. That is excess. Another 13,638, another 24,000 and another 18,00. Those are all excess. There is no use of going into that question of excess; I will admit that the tests showed an excess of over 12,000 pounds.

Q. When you made your re-bidding, or re-demand, for contract, what limitations did you put on the stone? A. 20,000 pounds. I want to go farther about that: the largest stone shows to be weaker and on that account you could pick a small piece of that stone and get rid of some of these defects, but with the larger stone you couldn't do that. So the defects were there and they were there in large quantities all through the quarry.

Q. Who took the samples? A. I don't know.

Q. Well, your commission made the test? A. They made the test.

Q. Who took the samples? A. I suppose Mr. Lucas or Mr. Miller.

Q. Do you assume that Mr. Lucas or Mr. Miller picked out those pieces of stone that would stand the greatest test in the Tomkins Quarry? They picked out the stone, undoubtedly.

Q. And took average pieces? A. Yes, sir.



Q. So that the entire stone of the Tomkins Quarry would answer the test of the samples that your commission took? A. They picked out the best pieces. The white stone wouldn't stand any pressure at all, hardly.

Q. Well, what investigation did you make as to whether or not the Tomkins Quarry was capable of delivering the quantity of stone required by this contract of a quality required by the contract? A. Mr. Lucas will have to explain that to you.

Q. Is there any written report on that question? A. I don't know whether there is or not.

Q. So that the entire report on which you based your rejection was this scholastic or technical report submitted? A. No; not at all.

Q. What else? A. I discussed the matter with Mr. Lucas and Mr. Miller thoroughly.

Q. What did Mr. Miller tell you differently from what is in the report? A. He told me that it was impossible to obtain from that quarry sufficient stone such as we required—of that high-grade stone.

Q. Of the 12,000 test? A. Yes, sir. But the 12,000 pound test isn't the only requirement that we have.

Q. What else is the requirement? A. It is required that the quarry shall produce suitable stone.

Q. The 12,000 test is suitable stone? A. No, it wasn't.

Q. What else is required to make it suitable? A. It was required to have high abrasive qualities.

Q. About the abrasive tests—what did you find? A. The first thing we did was to take the stone and weigh it. It weighed about the same as the other limestone.

Q. What demand did you make in regard to your weighing? A. There were no demands in regard to the weighing, but in examining the quality of the stone that is generally done.

Q. You made no demand in your specification in regard to that? A. We can not.

Q. What did you find out with reference to the weight of the stone? A. We found that the weight of the stone was not as heavy as the trap rock.

Q. Go to the next point. A. We took the absorption tests.

Q. What about the absorption tests? A. The absorption tests were high.

Q. What was done in that test? A. We tested to find the amount of the absorption of water.

Q. What absorption did you demand in your specifications? A. We didn't demand any.

Q. What does that indicate—the absorption test? A. It indicates that the stone is apt to become deteriorated in coming in contact with water.

Q. That probably would not affect the stone in the statement? A. He said it probably would not.

Q. What next? A. The next was the per cent of wear.

Q. Abrasive tests? A. It is abrasive tests.

Q. What does that indicate? A. It indicates 51, 63 and 59, an average of 58.

Q. What abrasive proposition did it involve? A. Against the Connecticut limestone of 2:9. It is generally considered by it. The Department of Agriculture had tests there and recommended that anything as high as 8 is bad.

Q. That is 6 or 8? A. Yes.

Q. This went to 1:9? A. This averaged 5:8. It is of absolutely no good as a ballast in the subway.

Q. Where does the abrasive feature come into use of the stone? A. In the pounding of the track on the ballast. We have only got a very little ballast between the ties and the concrete bottom of the subway. In tapping the ballast it is likely to go to pieces. Now, outside that isn't a very serious matter, but in the subway all the dust that comes from that stone is either shaken up by the trains or blown about, and it is injurious to the passengers.

Q. It doesn't come through, no matter how much the abrasion, if it is below the surface? A. Some of it comes above but other of it gets into the trains and where any of it rises it will injure the equipment of the cars. It is a very serious matter and it is a very objectionable feature.

Q. How many quarries, by the way, Mr. Craven, have you recommended finally and approved their stone and accepted it on this work, and what are their names? A. The Clinton Point is the limestone concern.

Q. Who is the President of the Clinton Point Company? A. I don't know.

Q. Can you find out? A. I suppose if I go to work along that line I can find out.

Q. Have any of your subordinates any knowledge of who the officers are? A. I don't know whether they have or not. I don't know anything about these officers.

Q. Can you give us a list of the officers of the Clinton Point Company? A. I cannot. Mr. Shaw is one of the officers.

Q. What other company have you accepted the stone from that was fully satisfactory? What about the Haverstraw Company? A. We didn't accept that because the Haverstraw is trap rock.

Q. Their stone is entirely satisfactory? A. Trap rock is entirely satisfactory.

Q. Mr. Craven, in your engineering work in connection with the Commission have you made preliminary investigations of quarries along the line of the Hudson and other places for the purpose of determining whether you could get suitable stone? A. No; my engineers have made themselves generally familiar with that.

Q. They have made preliminary investigations? A. I don't know how far they have gone into it.

Q. But they have gone into it? A. I won't say.

Q. Preliminary to any bidding? A. I cannot say.

Q. You won't say whether they have or not? A. We had bids for stone on this and any quarry in God's world has a right to make a bid if they want to. We are not going around spending our time to examine a lot of quarries that are probably no good in the world?

Q. I wondered about that because you specify weight, which is 12,000 pounds. A. I specify other matters besides.

Q. What other matters do you specify? A. I specify that the quarry shall be suitable to the engineer of the Commission?

Q. And who is the engineer of the Commission? A. I am.

Q. Now you specify crushing weight and your approval? A. Yes, sir—that the quarry shall be capable of producing the proper stone—that is the analysis of it, is it not?

Q. Crushing weight and your approval. A. Yes.

Q. Now, the crushing weight being one hundred per cent in excess of the demand, it totals up that it depends absolutely on your approval? A. On my approval—that is right.

Q. Now, when it comes to the question of your approval, you take the word of your engineers for absorption? A. I do; that is, if the tests that we have had made in the several laboratories were made as is customary.

Q. Absorption, first; abrasion, second—that what else third? A. Hardness.

Q. That is crushed, is it not? A. Something like that. Hardness is the toughness; abrasion is liable to be a fair measure of hardness and toughness.

Q. Abrasion would mean your hardness and toughness? A. In a degree, yes.

Q. What else? A. That is all.

Q. Is there anything to prevent you rejecting the higher degree of abrasion? A. I wouldn't answer that question direct. I will say there are other qualifications that govern that. If the item of abrasion alone was to be considered, I would accept it if that was satisfactory.

Q. Is there any provision in the specification to prevent you rejecting it—not approving it, rejecting it? A. No.

Q. Is there anything in the specification to prevent you from rejecting the better degree of absorption? A. No.

Q. Is there anything in the specification to prevent you rejecting the approved degree of hardness? A. No.

Q. So that the stone standing the crushing test——. A. I suppose you want to be fair about this matter?

Q. I want to be exact about it. A. Then we want to take in all the considerations in the matter, and I want to read you the reports and the examinations that I had made by chemists and others on this.

Q. Anything that you want to read, put in, except your own comments. A. This item of 12,000 pounds isn't the governing factor.

Q. You made it in your specification the governing factor. A. You know what I mean.

Q. I don't understand what you said in your specifications,

and nobody else does. A. The Pennsylvania uses the same specifications, and they were recommended by the Department of Agriculture by the maintenance of Ways. The specification provides that the quarries shall be subject to the approval of the superintendence of Maintenance of Ways on the railroads just the same as ours.

Q. Before you read your explanation, is there any report in the Public Service Commission that this quarry was incapable of producing the quantity of stone required by this contract of the quality required by the contract? A. I don't know as there is any specific report to that effect.

Senator Thompson.— Mr. Lucas and Mr. Mills, who examined the quarry reported to me that it was not covered by a report.

Q. Then there isn't any. A. Here's a memorandum that I recall which Mr. Mills gave to me. I shall read it:

“ February 4, 1916.

“ The ballast used in the original subway was trap rock. Trap rock is generally considered the best material available for this purpose because of its toughness. In the case of subway track the amount of ballast under the ties is necessarily limited by the lack of room. The depth of ballast under the ties between the bottom of the ties and the concrete floor of the subway structure varies from 3 inches to 8 inches whereas in ordinary railroad construction where the varies from 10 inches to 24 inches under the ties. Therefore, the pounding effect on the ballast in the case of the subway is very much greater. It is pounded between the underside of the tie and the concrete floor of the subway.”

Q. (By Mr. Moss.) Did you as an engineer know the advantage of trap rock for shallow ballasting? A. I did.

Q. And you knew it at the time that the specifications were prepared for these bids which are under discussion? A. I did.

Q. Why did you include in your demands under those specifications that the bidding should be done on trap rock exclusively? A. Well, there is another story.

Q. Well, tell it. A. All right, I will. The first bid that we asked for we called for trap rock because we had used trap rock in the original subway. We didn't get the bid.

Q. Where did they get the trap rock for the original subway?  
A. I don't know.

Q. Go ahead. A. We inquired, I believe, of the Haverstraw people why they didn't bid. They said that because of four requirements that this rock should be free from dust they could meet the terms of our specifications.

Q. Are they the only ones that can provide the trap rock? A. They were the ones that we went to—I don't know whether we went to another or not.

Q. Are they the only ones that could provide it? A. I think there are others. Anyhow our canvass of the situation made us conclude that we would have to do something to try and get rid of this, what we assumed to be a monopoly, and we looked around and found the New York Central. We found that they had this stone and they recommended it and said it was a very good, an excellent quality of ballast.

Q. Did anybody else make any recommendations? A. That I can't tell you.

Q. Do the West Shore use it? A. I don't think so, because they have a switch right into it, and they can get it very cheap. They can renew it as often as they please almost at no cost to them. They can go right into the quarry and get it.

Q. Couldn't they get it here as often as they want it? A. Not very well, and not as cheap.

I shall go on with the report :

“ To meet these conditions it is of vital importance that a stone be obtained of uniformly good quality and toughness so that under traffic conditions it will not readily pulverize and disintegrate with the tamping and pounding to which it is subjected. Unless such a stone is obtained a large amount of dust is created which adds to the discomfort of the traveling public as well as increases the cost of maintaining the tracks a considerable amount. (In this connection I might state that we very recently received a communication from the Health Commissioner on the subject of the desirability of reducing the amount of dust created by the stone ballast in the present subways.) The stone which really pulverizes and shows a large percentage of abrasion will also

tend to dam the drainage system of the subway. It is for these reasons that we consider the quality of stone for ballast to be of the highest importance. Another condition that necessitates the use of stone of high quality and possibly increases the cost of the subway ballast is the fact that we have to use a small sized stone on account of the limited space between the ties and the floor of the subway.

"With these conditions in mind the specifications for the stone in the new work were drawn to require trap rock, which, in our opinion, was the most suitable stone. The first contract, known as Order No. 1, for this new work was advertised on January 30, 1914. No bids were received. Representatives of the trap rock concerns claimed that our specifications were too severe, particularly as to the requirements that the stone be furnished free from "dirt, screenings or stone dust." After these objections we felt that it was essential to obtain stone of the character ??????????. After our experience we were inclined to believe that the New York Trap Rock market was controlled by one syndicate. In order to produce the proper amount of competition we decided to permit the use of very hard limestone as well as trap rock, retaining the the same specifications as to the quality of the stone.

"We readvertised Order No. 1 permitting the use of hard broken limestone as an alternative for the trap rock. Examinations made by us at the time proved that certain high grade hard limestones were almost as good as trap rock for ballast. The bids were received on this readvertised contract from one limestone concern. A careful examination of the stone produced by the limestone concern led us to believe that the material submitted was of a character suitable for use in the subway and we awarded the contract to them.

"(Assuming that the prices submitted by the trap rock concern had been paid on all of the material ordered by the City to date, and comparing this cost with the actual cost of the material contracted for, we find that there has been a saving of \$17,580 by allowing the limestone people to bid.)

"The specifications for the first order of stone required, among other things, that the material should have a crush-

ing strength of 12,000 pounds per square inch and that it should be free from quarries approved by the Engineer as containing material of the desired quality. These were the requirements generally used by the railroads and were exactly the requirements of the Pennsylvania Railroad Company which we considered a very good standard to follow. There are so many qualities and grades of stone used for ballast that the only practical way to determine their relative merits for ballast is by an actual examination of the quarries and an examination of the efficiency of the stone under traffic conditions. It, therefore, follows that the usual practice is to purchase stone subject to examination of the quarry. We considered that the right of the Engineer to approve the stone to be of prime importance. The crushing test was only an index to the quality and was for our assistance, together with other information that we might obtain, in deciding on the acceptability of the material.

“We were prepared to let our next order of ballast, last summer. This order is known as Order No. 3 and was divided, for convenience, into three portions. The material furnished under the original specifications being satisfactory, we saw no reason for changing them and we advertised Order No. 3 using the old specifications.

“Bids were received on the second order on August 4 from three concerns, namely, the Haverstraw Crushed Stone Company, the Upper Hudson Stone Company and Calvin Tomkins. The Haverstraw Crushed Stone Company bid on crushed trap rock, the Upper Hudson Stone Company and Calvin Tomkins on limestone. The bids of Calvin Tomkins were so extremely low that we were very desirous of accepting them and I, therefore, had a very careful examination made of the material in his quarry and also material which he had supplied to and which was installed on, the West Shore Railroad. We also had physical tests made by our own testing laboratories and checked by an outside laboratory. The results of these investigations and tests were submitted, together with samples of the stone, to the Chief Engineers of the two operating Companies which were



to maintain the tracks and to Mr. George Gibbs, our Consulting Engineer, and an experienced railroad engineer. It was the consensus of opinion that the stone furnished by the quarry of Calvin Tomkins was not desirable for use in the subways, notwithstanding the fact that it apparently represented a considerable saving in cost—I say apparently for the reason that ultimately it would result in a saving. The material, in our opinion, would have to be renewed in a very short time at tremendous cost. We felt that we would be justified under the circumstances in purchasing a better stone at the increased price in order to obtain stone which would give us the desired length of life and freedom from dust. The stone furnished by the Upper Hudson Stone Company was of the same quality as the stone furnished on our first order and was, therefore, satisfactory and acceptable.”

Q. (By Mr. Moss.) You don't use two-inch stone? A. No, sir.

Q. But you made tests on two-inch stone to reject the Tomkins material? A. That wasn't pertinent; we might make it on a four-inch cube.

Q. Right there. When you got around to this particular contract which was rejected you had then, as an engineer, a positive knowledge that you had a shallow ballast? A. I don't know what you are driving at. Do you mean to say that I am trying to beat somebody on ballast?

Q. Don't let us anticipate one another; let's answer questions and ask them. I will ask them, and you answer them, please? At the time that this specification was prepared on the contract which was rejected on the Tomkins quarry stone, you had an absolute knowledge that you had a shallow ballast? A. I did.

Q. You had an absolute knowledge that you wanted a stone that would not abrade and create a dust? A. Yes, sir.

Q. You had an absolute knowledge that you wanted a stone of a certain degree of hardness? A. Yes.

Q. And you had an absolute knowledge that you wanted a stone of a certain defined crushing power? A. Yes.

Q. According to establish usage? A. Yes.

Q. The established usage of crushing power was 12,000 pounds? A. Yes.

Q. Why did you not include any of the other requirements in your specifications? A. Because at that time we followed the usual practice.

Q. And what was the usual practice? A. Just the usual practice—a crushing power of 12,000 pounds and that the quarry should produce stone suitable to the engineer or to the party who is purchasing the stone.

Q. Was it not your duty as Engineer of the Public Service Commission to include in your specifications those conditions that you found were necessary? A. We didn't consider it to be necessary at that time.

Q. They were not considered necessary at that time? A. No, we simply followed precedent on all railroad work.

Q. After the bids had been received according to your established precedent what was it that created in your mind the necessity of involving these other conditions to reject the Tomkins quarry stone? A. I had no idea of rejecting the Tomkins quarry stone.

Q. But you did; what made you reject it? A. I had an examination made of the quarry to see if it could furnish suitable stone.

Q. Right there. Have you ever received a report from any subordinate of yours that the Tomkins quarry was not capable of producing the necessary quantity of suitable stone under the specifications? A. I am trying to get to it.

Q. In writing? A. In printing here.

Mr. Smith.—I would like it understood that he is answering the question as to whether there was a report from any subordinate of his that the Tomkins quarry was not capable of producing the necessary quantity of suitable stone under the specifications. A. The report that I have already read from the General Inspector of Materials was along that line. I shall continue Mr. Mills' memorandum:

“As I stated before, this contract was divided for convenience into three portions designated as Portions A, B and C. The market conditions had changed to such an extent between the time the first order was let and the second order

was advertised that the prices obtained on the second order were considerably less than those obtained on the first order. Bids were received for Portion A from Calvin Tomkins, the Upper Hudson Stone Company and the Haverstraw Crushed Stone Company. Calvin Tomkins was the lowest bidder for this portion and I recommended that his bid be rejected because of the inferiority of the stone. The second lowest bidder, the Upper Hudson Stone Company, submitted a defective bid and under the circumstances I did not feel that we were justified in awarding the contract to the highest bidder and recommended that the contract be readvertised. We only received one bid for Portion B, namely, the Upper Hudson Stone Company and believing that we could get a better price I recommended that Portion B be readvertised. On Portion C I recommended that the bid of Calvin Tomkins, the low bidder, be rejected because of the inferiority of his material and that the contract be awarded to the next lowest bidder, the Upper Hudson Stone Company. I made this recommendation rather than a recommendation of readvertising because we were very desirous of getting stone at once in order to provide ballast for the installation of tracks on the Queens Lines. We felt that any delay in awarding the contract for this portion of the ballast might make it difficult for us to obtain stone before the close of navigation on the Hudson River for the Winter, thus delaying the work on the Queens Lines until next Spring. The Commission accepted my recommendations on all three portions—readvertising Portions A and B and awarding Portion C to the Upper Hudson Stone Company. The Commission forwarded the contract for Portion C to the Board of Estimate and Apportionment for its approval. Mr. Tomkins protested at the time both to the Commission and the Board of Estimate and Apportionment against this decision.

“As a result of the discussion of the question by the Commission it was thought advisable to revise the specifications for ballast in order to furnish the bidders with more information as to our requirements and the basis of our judgment in

selecting the stone, although it had been and is now the standard railroad practice to leave the determination of the quality of the stone in the hands of the Engineer. The question was looked into very carefully and using the results of the examinations and tests which we had made the specifications were revised. Generally the revised specifications prescribed qualities which are described as desirable by the United States Department of Agriculture and by the American Railway Engineering Association and specify exhaustive tests in accordance with methods employed by the government. The results of tests which we made and others to which we had access indicated that we could modify our requirements with respect to crushing by increasing the crushing requirements from 12,000 lbs. per square inch to 29,000 pounds per square inch without restricting competition.

“ In this connection I wish to state that our tests of the Calvin Tomkins stone showed a crushing strength varying approximately from 13,000 to 33,000 lbs. per square inch, the average of the ten tests being about 23,000 lbs. Frequently a figure of 28,000 lbs has been mentioned as representing the test that the Calvin Tomkins stone could satisfy. This 28,000 was apparently obtained as a result of some tests of one-inch cubes made in the laboratory of the Public Service Commission. At the same time the laboratory of the Commission made tests of two-inch cubes. The average of these tests was about 18,000 lbs. In our new specifications we adopted a standard of 29,000 lbs or just a thousand pounds over the average obtained from the tests of the one-inch cubes. On the other hand, our standard was 11,000 lbs over the average obtained from the two-inch cube tests. It is not fair argument to claim that our 29,000 lbs was fixed upon to exclude the Calvin Tomkins stone based on one of our averages while ignoring the other. The real average of all the tests of the Calvin Tomkins stone, all of which were equally pertinent in determining the quality of the stone, was 23,000 lbs. so that the crushing strength required in our specification is 6,000 lbs in excess of the average of the tests made by the Public Service Commission laboratory. As a matter

of fact, our tests of the Calvin Tomkins stone had no bearing whatever upon our selection of the 29,000 lbs standard. The information upon which this standard was selected was obtained from the results of an investigation made by the Office of the Public Roads of the U. S. Dept. of Agriculture, which was published in current periodicals. This laboratory published a table in which it classified stones for use as ballast as 'Excellent' with a crushing strength of 30,450 lbs. 'Very Good' with a crushing strength of 27,640 lbs.; 'Good' or 'Fairly Good' with a crushing strength of 20,510 lbs., and 'Poor' with a crushing strength of 23,640 lbs., with other qualities particularly inferior. This table was prepared from information received from a great many railroads in the country as to the actual results which they had obtained in service from the use of stones of the various qualities indicated. A careful analysis was made by us of the detailed tests upon which this table was made up and the conclusion arrived at from this analysis was that a crushing strength of 29,000 was a fair line of demarcation as between inferior stone and stone to be used for our purposes. It must be remembered that subway conditions require something even better than standard railroad practice requires. In other words, we have only chosen a stone with crushing requirement a little in excess of that of the stone mentioned in the Department of Agriculture classification as 'Very Good.' It should also be pointed out that the average of 23,000 of our tests of the Calvin Tomkins stone is practically exactly the crushing strength as put down for 'Poor' stone in the Department of Agriculture classification. This character of stone, however, had only a toughness of 6, whereas a stone of the slightly less crushing strength of 20,000 lbs., with a toughness of 8 was considered fairly good. In a report of the Department of Agriculture no tests were made as to the toughness quality of the Calvin Tomkins stone. It seems to me apparent from this that our adoption of 29,000 lbs as a standard for crushing strength was based on reasonable grounds, and that it can only be claimed that it was fixed upon to exclude the

Calvin Tomkins stone by a misuse of figures—in other words, it was a case of ‘ wish being father to the thought. ’

“ However, the crushing strength of stone is not necessarily the determining factor as to its desirability for ballast and there are many other things which have to be taken into consideration such as its toughness, hardness and resistance to wear. The question is still being investigated by the important maintenance of way associations of the United States in an endeavor to prepare and recommend a comprehensive set of specifications for the selection of stone ballast.

“ The new specifications prepared to cover the conditions mentioned above were used in the readvertised contracts. Mr. Nelson P. Lewis, Chief Engineer of the Board of Estimate and Apportionment, in his report later to that board regarding this subject, agreed that the new specifications undoubtedly represented the best modern railroad practice.

“ Calvin Tomkins failed to bid on the readvertised contracts and they were awarded to the low bidders, the Upper Hudson Company, for Portions A and C, and the Haverstraw Crushed Stone Company, Portion B. ”

With reference to a question asked me not long ago, I shall read a letter from Mr. George Gibbs, who is our Consulting Engineer :

*“ August 17, 1916.*

“ Mr. Alfred Craven, Chief Engineer.

“ Public Service Commission,

“ 154 Nassau Street, City.

“ Dear Sir:

“ I have had up with Mr. Mills the consideration of the bids for ballast on Order No. 3, opened August 4th. As I understand its bids were received from three Contractors and the prices varied greatly. Two bids were for Hudson River limestone and one for Hudson River trap rock. The trap rock bid for Class A material was \$1.14 per cubic yard and the pices for limestone were as follows :

Calvin Tomkins .....	58.4c cu. yd.
Upper Hudson Stone Co. ....	98.0c cu. yd.

"On account of the great variation in price, Mr. Mills made a personal inspection of the quarry of the lowest bidder (Calvin Tomkins) and as a result of his inspection and an examination of the samples of stone furnished as well as tests made by the Public Service Commission laboratories, Columbia University laboratories and results of tests published by the U. S. Department of Agriculture, we concluded that material from this quarry is not suitable for Class A and Class B ballast. We find that, while some of the material from this quarry has the requisite hardness and other physical properties, it lacks uniformity to a serious degree and uniformity in the quality of material used in ballasting the Subway tracks is a very important matter.

"As regards the Upper Hudson Stone Company's limestone, we have made inquiries of the Railways who have used this material and we have also had experience with about 52,000 yards in the 4th Avenue Subway. This experience and also the examination and tests of the samples submitted lead us to the conclusion that the material is high-grade limestone of uniform quality and compares favorably with any limestone of which we have knowledge which has been used for ballast elsewhere.

"The trap rock ballast of the Haverstraw Crushed Stone Company is also a good and uniform product and entirely suitable for subway track ballast.

"The choice, therefore, as regards quality and service should lie between the Upper Hudson and the Haverstraw Company's material.

"Our specifications allow either limestone or trap rock; this latitude was given expressly in order to widen the market and obtain favorable bids. At equal prices, I should prefer the trap rock, which is the material now used in the old subway track construction, and my experience on steam railroads would lead me to this same preference. The objection to many limestones is that when exposed to the weather, heavy traffic and tamping tools they are apt to break up and become dusty; these objections are, of course, serious ones if they should obtain under subway conditions. It appears to us, however, that under our conditions the Upper Hudson

limestone, which is hard and uniform rock, will give good service and compare favorably with the trap rock; at least I do not think we are justified in paying the higher price for the trap rock as disclosed by the bids. I am firmly of the opinion, however, that we should not purchase an inferior limestone or one of the qualities shown by the tests and the examination of the material of the Calvin Tomkins quarry.

"As reinforcing our opinion upon this subject, we have talked with the Chief Engineer of the Interborough and New York Municipal Companies and believe they will bear us out in our conclusions.

"The question now arises as to what action to take in connection with the bids received on August 4th. In view of the above opinion, I am in favor of awarding the contracts for Portions A and C to the Upper Hudson Stone Company, in spite of the fact that they are not the lowest bidder, but the Legal Department advise that we cannot award the contract for portion A to this company because of a defect in the proposal, but we can award Portion C to this bidder and I recommend that this be done in order to avoid delay, as it will give us sufficient stone to go ahead with certain work while obtaining new bids on the other two portions.

"Due to the fact that we are to use Portion B only for filling, it would appear possible to obtain a better price for this material than that submitted by the Upper Hudson Company, which was the only company bidding on this quality and I, therefore, do not recommend awarding them this portion on their present proposition.

"If the above recommendation is carried out, it will necessitate readvertising for Portions A and B, if this is done, I would recommend making the specifications somewhat fuller and to this end would propose that the enclosed rider be placed on Page 15 of the new form of contract.

"Very truly yours,

"*Enclosure :*

"Rider A—Page 15.

"Subdivision 12—Sections 12-1, 12-2, 12-3 and 12-5.

"Provided, however, that the three (3) inch ballast shall



be from quarries which are approved by the Engineer as containing material of the desired quality for use in filling tracks and that it shall meet the requirements of Section 12-5 of the Standard Specifications.

"For Class A and Class B ballast, the following characteristics will be required :

"(a) Maximum uniformity in composition.

"(b) Maximum weight in pounds per cubic foot.

"(c) Least water absorption in pounds per cubic foot.

"(d) Greatest hardness.

"(e) Greatest toughness.

"(f) Least percentage of wear, not less than 2.3 per cent.

"(g) Crushing strength, not less than 29,000 lbs. per sq. in. tested on a 1-inch line cube.

"The method of determining these characteristics shall be given in the report of the Committee on Ballast of the American Railway Engineering & Maintenance of Way Association, Volume II, Part 2, of 1910, and the method of testing for these qualities shall be as given by this Committee and developed by the United States Department of Agriculture."

Q. (By Mr. Moss.) Who were the outside men? A. One is Mr. Arthur Blanchard and the other is J. W. Houten.

Q. Right there, Mr. Craven. Under those circumstances, and knowing that from an engineering standpoint, what is the use of making specifications? Now, just explain that to us—what is the use of making specifications? A. If it was my private affair, I wouldn't have any.

Q. As a public official, what is the use? A. We have to make them.

Q. Why don't you tell us, now, what is the use of making specifications? A. I couldn't tell you what is the use; we have to make them.

Q. Why? Because we cannot fill a contract without them.

Q. Oh, yes, you could? A. No, we couldn't.

Q. What is the use of making specifications where specifications are no good? A. The same sentence answers your question exactly. You know that we cannot fill a contract without some requirements. We cannot do it.

Q. But they are useless. A. We couldn't do it—now, that's **my** answer.

Q. It is simply a matter of official machinery, then? A. **We** couldn't do it—that's my answer.

Q. What position does Mr. George Gibbs hold? A. He is **our** Consulting Engineer.

Q. Is he a member of the firm? A. The firm of Gibbs & **Hill**.

Q. Has he any employes in the Public Service Commission that are relatives? A. Not that I am aware of, there may **be**. He has been Consulting Engineer for years for the Pennsylvania Railroad Company.

Q. How much did it represent in the saving? A. I cannot tell; it is about \$100,000.

Q. Had you not received some complaints from the Board of Health in regard to the dust where trap rock is used?—and that **it** is supposed to be the best? A. It is.

Q. And you still had complaints? A. I only meant by **that** that we were doing all we possibly could to avoid the dust.

Q. As between the Hudson Company and the trap rock **people**, what was the difference there? A. In prices?

Q. Yes.

Q. What was the defect in the bid? They didn't specify **what** they were bidding for.

Q. At \$100,000 increase? A. I don't remember—there **are** other elements in connection with that.

Q. In what way did you revise your specifications as to **the** quality of stone? A. \$30,000, the difference in price on **Portion C**.

Q. With reference to toughness, that is exclusive, is it **not**? Those very words there are exclusive. As an engineer, don't **you** recognize that? A. I do not. What do you mean by being **exclu-**sive?

Q. There being only one person success—one bidder **succeed**.  
A. No.

Q. Don't the specifications say so? It simply says that the following specifications will govern.

Q. What is it? A. That means that we can interpret those reasons. We have a perfect right in making a determination on the materials we are using to use a certain amount of judgment within the limit of the contract requirements.

Q. I realize that, but do not your printed specifications become exclusive as to hardness—"yes" or "no," please? A. No.

Q. Do they not become exclusive as to toughness? Wherein does the limitation come as to exclusiveness? A. It comes by our examination of the material and our tests that we put it to.

Q. And whose judgment? A. Mine, the Engineer's. I shall now read subdivision 12 on Page 15, of Chapter 3, referring to letter of September 15 :

Q. Did that revised specification include anything in regard to hardness except the provision that you read here? A. No.

Q. Did it include anything in regard to abrasive qualities except what you have read here? A. No.

Q. Did it include anything in regard to absorption except what you have read here? A. I will not answer that "no," because I have overlooked something, that the method of determining these characteristics shall be those given in the report of the Committee on Ballast of the American Railway Engineer and Maintenance of Way Association, and that describes all these matters.

Q. Did it include anything except what you have read in regard to hardness, toughness or abrasiveness? A. Only what I have read. We found by the general examination of these different articles an examination that had been going on in reference to the qualities of the ballast that we could well afford to call for much higher standard crushing than we had formerly used.

Q. How many bidders on work for the subway construction would the increased crushing power eliminate? A. I don't know.

Q. Did you ever make any inquiry as to that? A. No.

Q. Ever ask any of your subordinates? A. I have made no inquiry.

Q. You knew it would eliminate some? A. I didn't know of any individual or any firm or any particular party that it would eliminate.

Q. You knew it would eliminate the Tomkins Company? A. I didn't need the crushing strength to eliminate that.

Q. Your opinion would do that? A. Yes, my opinion was enough. We aim high in our requirements for our work.

Q. What work, public or private, do you know outside of the Public Service Commission work of the City of New York that requires 29,000 pounds crushing test for ballast? A. I don't know of any.

Q. From what company was that obtained? A. From the Calvin Company.

Q. You demand a test that was in excess of the average obtained from that company? A. Yes. We examined the Department of Agriculture reports on that subject very carefully. We went into this very carefully. We were not trying to beat Mr. Calvin Tomkins out of a contract. I want to say that very plainly. Personally, if I had any personal preference in the matter, I would have given Mr. Calvin Tomkins the contract the very next day that he bid.

Q. Had you any knowledge at that time that Mr. Sullivan, a director of the Interborough Rapid Transit Company, was a director of the Upper Hudson Stone Company? A. Not at all. I never heard of Mr. Sullivan before I saw his name on the paper.

Q. Mr. Quackenbush informs me that Mr. Vanderbilt was also a director in the Interborough and in the Upper Hudson Company — did you know that? A. I know nothing about it at all. If I had, it wouldn't have made any difference, Mr. Moss.

Q. I didn't know that Mr. Cornelius Vanderbilt was a director.

Mr. Quackenbush.—Mr. Vanderbilt was a stockholder, but not a director. That was a slip of the tongue. A. We found that after examining these papers that stone represented as excellent is the trap and limestone and weighs about 30,000 pounds. Of stone that was limestone and sandstone and gravel, that was 27,640 pounds. We wanted something better and we took the 29,000 pounds.

Q. Whether it occurred to anybody or not, the result was the same? A. That may have been. There was no intention of cutting Mr. Tomkins out on that account. I want to say that under no circumstances would I approve of Tomkins stone going into

the subways as a ballast. It is an unsuitable stone and has been proved so.

I am willing to admit that had it not been a common precedent, the general practice of the big railroads, we might have gone into these matters more thoroughly in regard to these requirements. But we never considered it necessary at the time. We got our limestone for the Fourth Avenue subway and we thought we were going along on the right track.

Q. Mr. Craven, did you not recognize that fact originally, as an engineer? A. I have explained that we acted on precedent and what we thought good practice. At that time I did not consider it advisable to go any farther so long as the question had never been raised, excepting that as an engineering proposition, the engineer should have the right to make an inquiry and make his own tests such as he thought necessary and find out whether in his opinion they are suitable materials for the purposes in mind.

Q. Did you not recognize, Mr. Craven, as an — A. No, I did not.

Q. What raised the question of the requirement of that additional or special qualification in regard to subway ballast? A. The question was the hardness and toughness and uniform character of the stone.

Q. What raised it? A. The first matter that raised it was when we rejected the Calvin Tomkins stone—one of the Commissioners raised the question as to specification.

Q. Who was the Commissioner? A. Commissioner Hayward. I didn't agree with him as to any necessity for changing it at all, but so long as the question had been raised, I didn't see as it would do any harm and so the matter went along. I will say in reference to the general requirements that the quarry that the stone came from is approved by the Engineer.

Q. Is not the approval of the Engineer a superlative requirement after you have made certain specific demands? A. It is the final word.

Q. And you put into your specification all of the details that will permit this man or that man with a different quarry or different ability to serve to have an opportunity to present himself to the Engineer or to the Commission, whatever it may be—that

is true, is it not? A. That is a question that is negligible. All contracts and specifications are just full of material that somebody puts in, and we are up against it, and other contractors are too. There is no end to a discussion of that character.

Q. In all competitive bidding you present certain specified details that all men must conform to? A. Yes.

Q. And then beyond that they must conform to the opinion or judgment of the engineer in charge of the work? A. In a certain way, yes.

Q. Now, what outside of a crushing test did you present to the general community as your requirement? A. Well, I should have the privilege of investigating the quarry and seeing whether it would produce satisfactory stone.

Q. In other words, your superlative judgment after the crushing test, that is so, is it not? A. Based on such examinations as could properly be made to determine the character of the stone.

Q. As you made? A. You don't mean that I personally made?

Q. That your subordinates made. A. Yes, and none of those were put into the specifications. That is, the quarry had to produce stone satisfactory for the purpose for which it was intended. That means that we would make such tests as were necessary to satisfy ourselves that that quarry would produce suitable stone. It is all covered in that.

Q. You realize why he failed to bid, don't you. A. Why certainly—because he realized that he did not have stone that was suitable for our purposes.

Q. He couldn't come up to the 29,000 pounds test. A. No, he knew that he couldn't provide stone from his quarry that would be suitable. The tests made by Mr. Blanchard show the great inferiority of the stone.

Q. As a matter of comparison, with what inferiority as compared with what? A. With the Upper Hudson.

Q. There were three bidders. A. Yes.

Q. Who was the man who made the tests? A. Mr. Blanchard. He didn't know, of course, what he was testing.

Q. Of what concern is Mr. Blanchard? A. Arthur Blanchard—I don't know whether he is an individual or not. He is from Columbia University—Professor of Highway Engineering.

Q. Did you ever find, Mr. Craven, whether or not he had made previous tests of road material in this district—of ballast? A. No, I didn't find out. I left this matter to Mr. Lucas. If I would go in and investigate every man, woman and child before I could do anything, I would never accomplish anything.

Q. We simply ask you now who had the responsibility of turning these tests over to Mr. Blanchard? A. Mr. Lucas. In order to further satisfy the people as to the desirability of these stones over the others—

Q. You speak about the desirability of the stone—there is no question about the desirability of stone that has 33,000 pounds crushing capacity. A. I will change it to "advisability." I wrote to Mr. Menden. In the first place the original feeling was that the ballast should be good equipment for this reason, that at times it has got to be renewed and it is renewed and taken care of by the operating companies. I, therefore, felt it proper to write to Mr. Menden, Chief Engineer of the B. R. T., a man with large experience. Following is his reply:

*"August 17, 1915.*

"Mr. Alfred Craven,

"Chief Engineer, Public Service Commission,

"Tribune Building, New York City.

"Dear Sir :

"Answering your letter of August 16th, referring to your letter of August 6th with which you submitted copies of tabulation of bids received for the supply of ballast, Order No. 3, I note that you ask for our recommendations as to the kind of ballast to be purchased for ballasting tracks in the subway.

"We have carefully noted the results of tests as submitted to us with your letter and from these tests it seems evident that the crushed limestone, proposed to be furnished by the Upper Hudson Stone Company, is a better stone for ballast than that proposed to be supplied by Calvin Tomkins. The price submitted by Calvin Tomkins is a very low one and for track in open cuts or on fills, we would on account of such low price recommend the use of this stone, but in view of the fact that for subway track it is desirable to have ballast which is clean and durable, we would recommend the purchase of a

harder stone. This will involve a substantial increase in the cost of the item of ballast but for subway track construction we believe this increased expense is justified.

"We have on hand at 38th Street both kinds of stone, using the Tomkins stone for concrete and the other stone for ballast. The appearance of the stone as delivered on the ground substantially confirms the results of the tests as submitted to us with your letter of August 16.

"The tests on the stone as furnished by the Upper Hudson Stone Company indicate that this stone compares favorably with trap rock and apparently has further merit in that it will not break up into thin pieces. Ordinarily, preference would be given to trap rock over any form of limestone.

"In view of the tests as made and information we have been able to obtain in regard to this matter of ballast, we recommend the use of the stone as offered by the Upper Hudson Stone Company.

"Yours truly,

"(Signed) W. S. MENDEN,

"Chief Engineer."

Q. What was that letter in answer to? A. That was in answer to a letter which I wrote him on August 16. I will read that letter:

"Aug. 16, 1915.

"Mr. W. S. Menden,

"Chief Engineer,

"N. Y. Municipal R. C.,

"85 Clinton St.

"Brooklyn, N. Y.

"Dear Sir: On August 6 I sent you copies of the tabulation of bids received for the supply of ballast, Order No. 3, opened on August 4.

"These bids indicated considerable difference in the price and also a considerable difference in the quality of the stone to be furnished. In view of the importance of a substantial and clean stone on the subway work, we have gone into the matter thoroughly and I am sending you herewith copies of reports on the physical qualities of the stone submitted and request that you give me your recommendations based on your experience and judgment in the matter.



"The tests made by the Public Service Commission, Mr. Howard and Mr. Blanchard are on samples of the best of the quarries output and do not necessarily represent the general run of the quarries. It is almost impracticable to obtain representative samples in view of the very great difference in the quality of the stone.

"Very truly,

"(Signed) A. CRAVEN,

"Chief Engineer."

Q. You say "the bids indicate." Don't you use that expression there? A. The bids did not indicate the difference in the quality. That was not intended that way. I wrote a letter to Mr. Geo. F. Pegram similar to the one I wrote to Mr. Menden.

Q. Will you tell me what interest — knowing the dual system that exists in the City of New York and the obligation in regard to the payment and restoration and repair and maintenance — will you please tell me what interest Mr. Pegram and Mr. Menden had in the kind of ballast that you should recommend? A. They were responsible engineers in charge of that work for their companies. They were responsible, competent and well-known engineers. I dealt with them in that spirit.

Q. As a relative proposition, Mr. Craven, where do Mr. Pegram and Mr. Menden stand as engineers of the subway construction in the City of New York in your opinion? I mean as to obligation; not as to ability, but as to obligation? A. I assume they would be honorable men. One of them is looking out for the construction of one company and the other for another.

Q. We would like to know frankly as a relative proposition, not from the standpoint of ability but from the standpoint of obligation to the people of the City of New York. You have two engineers, Mr. Pegram and Mr. Menden. A. Our interests are in common.

Q. You have no superior position to them in your opinion? A. I cannot say whether I have or not. I am not making comparisons of my position to Mr. Pegram's.

Q. This is not pleasant, but it is necessary? A. What is necessary?

Q. That you make that remark? A. I wouldn't give you my opinion.

Q. You don't recognize, then, that you have any superior position to that of Mr. Pegram or Mr. Menden in regard to your obligations to the City of New York as an engineer on this subway construction? A. My obligation to the City of New York is a common interest. I look upon those gentlemen as dealing in a matter of common interest.

Q. But I am asking you a question. Do you recognize that you have any superior position to either Mr. Pegram or Mr. Menden so far as your obligation to the City of New York is concerned? A. I can't answer that.

Q. Is it because you cannot, or won't? A. Because I don't feel that it is a proper question to ask me.

Q. You refuse to answer? A. I don't wish to answer. It is a personal matter that I don't wish to answer.

Senator Thompson.—He doesn't mean to draw a personal comparison—he doesn't have that in mind. A. It is a personal matter that I don't think I should be asked.

Q. I will exclude everything except the official character of your position, your official obligation to the people of the City of New York. A. If you will ask me what my own official obligations to the City of New York are I will tell you, but not as compared with Mr. Pegram and Mr. Menden.

Q. Then the question is valueless.

Senator Thompson.—Now, I think you understand the question. Have Mr. Pegram and Mr. Menden any obligation to the City of New York? A. I think they have.

Q. (By Mr. Moss.) Have you any obligation to the City of New York? A. I think I have.

Q. Is there a difference in the obligation you have to the City of New York and what they have? A. I don't think there is any difference. I am going to read a letter which I received from Mr. Pegram, as follows:

.. New York City, Aug. 17, 1915.

" Mr. Alfred Craven,

" Chief Engineer,

" Public Service Commission,

" New York City.

" Dear Sir: I am just in receipt of your favor of the 16th, relative to contract for the supply of ballast, order No. 3, and beg to say that I have carefully examined the reports of tests submitted with your letter, and have also examined the samples in Mr. Mills' office. In my opinion the Tomkins Cove limestone is not fit for ballast for the subway where it is necessary to tamp the ballast between the base of the tie and the hard concrete bottom of the subway. The dust that would be produced by tamping stone of this soft character would render the air unpleasant, damage the equipment, tend to clog the drains, and would require frequent renewal.

" The problem presented seems to me is, whether to accept the trap rock or the Dolomitic limestone offered by the Upper Hudson Stone Company. In view of the difference in the bids, I would recommend acceptance of the Upper Hudson Stone. This stone is very little inferior to trap rock in hardness, wearing qualities and crushing strength.

" Very truly yours,

" (Signed) GEO. H. PEGRAM,

" Chief Engineer."

That report and also the reports of our Consulting Engineers. Messrs. Hill & Gibbs, are the opinions of railroad engineers, men who have had large experience all over the country.

Q. (By Senator Thompson.) What is the difference in cost between the low bid and the one you accepted? A. The low bid was \$144,000 approximately; the winning bid was about \$228,000.

Q. (By Mr. Moss.) You don't mean to say that Tomkins' stone is mud? A. I think a great deal of Mr. Tomkins.

Q. It was double the crushing test of your original demand? A. That has nothing to do with it.

Q. It cannot be mud if it stands that sort of a test. A. The only thing I have noticed detrimental about that stone is that there

is a good deal of dust in it, and that dust would get into the subway through continuous hammering.

Q. I noticed that Mr. Shaw, the President of the Upper Hudson Company, is here. How did he come to be here, do you know?  
A. I don't know anything about it.

Q. We didn't send for him. A. I had no favorites in connection with the contracts. Individuals are all alike to me — every one of them. I am governed by my own conscience and my own feeling.

Q. I will tell you how it happened that this matter that was opened by Mr. Colby was referred to the other day. Mr. Sullivan was on the stand testifying as a director of the Interborough and some one in the room informed me that Mr. Sullivan was a director of the Upper Hudson Crushed Stone Company and that reminded somebody of the old matter that Mr. Colby had opened up. It opened up very naturally because of the connection suddenly discovered with Mr. Vanderbilt and Mr. Sullivan. Looking back at the testimony, I found that Mr. Colby asked Mr. Tomkins whether any director of the Interborough was interested in the Upper Hudson Stone Company, and he said he didn't know of any. The matter passed that way. Of course, with that connection coming out and being presented to us, it was necessary to go through it. A. That is all right; I don't take any exception at all.

Q. It appears all this stone was used on contract No. 3, some of it in the Steinway Tunnel and some of it on the Lexington Avenue Branch, the new subway. A. In addition to what I have already given you, this matter before it was settled was taken up by the Board of Estimate.

Q. Was that matter brought to your attention or pressed upon you by some other member of your staff? Of course, you couldn't know all these things intimately of yourself, but some one on your staff brings them forward to you. Can you help us along that line?  
A. There is no suggestion at all except that it was a new quarry. When the bid came in it immediately occurred to our track man, I suppose, that that quarry should be examined.

Q. Who was that man who thought of that? A. Mr. Miles.

Q. Mr. Miles is here. Suppose we ask him a few questions?

Testimony of MR. MILES:

Examination by Mr. Frank Moss. (Witness is sworn.)

Q. Mr. Miles, how long had you been connected with the Public Service Commission before this matter came up? A. About two years.

Q. And what was your relation? A. I am in charge of the track work.

Q. Had you had occasion to pass on ballast before that time? A. Yes, sir.

Q. Before the Public Service Commission? A. Yes, sir.

Q. Did you know any one connected with the Upper Hudson Company that we have been talking about? A. No, sir.

Q. Had they supplied any stone before? Had they supplied any stone that you had to pass on to the Public Service Commission? A. They supplied order No. 1.

Q. You examined that stone? A. I examined that stone and used it in the Fourth Avenue subway.

Q. Who did you come in contact with in connection with that company? A. With Mr. Shaw principally. Mr. Shaw is their manager in New York.

Q. Where did you see Mr. Shaw? A. In my office.

Q. Did he come to your office? A. Yes, sir.

Q. In the Public Service Commission? A. Yes, sir.

Q. What for? A. In connection with the handling of the contract of Order No. 1, the delivery of the stone and signing up of the contract and handling the details of the contract.

Mr. Craven.—Whenever we get a bid from anybody the lowest bidder is always asked to come to our office and put through an examination as to the capabilities from a financial standpoint.

Q. Did you come in contact with any other officer or employe of the Upper Hudson Company? A. Mr. Dana. He is one of Mr. Shaw's assistants.

Q. Did you handle any more than one contract with Mr. Shaw? A. That was the only one.

Q. I think you said you never knew him before or in any other way? A. Never before I came with the Public Service Commission.

Q. Did you ever know Mr. Shaw in any other way than through that contract that you handled? A. No, sir.

Q. And did you bring Mr. Craven's attention to something that was the matter with Tomkins' stone? A. Not to my knowledge. We submitted the bids to Mr. Craven as we usually do, and we were asked to make an examination of the quarry in accordance with the terms in the specification. We arranged with Mr. Lucas' office to go up there.

Q. Did you invite Mr. Tomkins to your office? A. Mr. Tomkins was in my office. I don't know whether I invited him in, but I know he was in there several times.

Q. Did you invite him in connection with his low bid in this case? A. Not that I can recollect.

Q. Why didn't you? A. Why should I? I didn't have any occasion to invite him in there.

Q. If I understood you correctly, the lowest bidder usually is invited in? A. You misunderstood that. After it is decided to award a contract the successful bidder is invited in and the financial conditions gone into, and they are asked to render a financial statement of their company. That is what Mr. Craven was trying to say.

Mr. Smith.—Did not Mr. Craven say a few moments ago that when a bid was received the lowest bidder was invited in to discuss his financial standing and capabilities? A. Yes, sir.

Q. (By Mr. Moss.) Why didn't you invite Mr. Tomkins into your office under those conditions?

Mr. Craven.—That was not done until we had examined the quarry.

Q. Did you examine Mr. Tomkins' quarry? A. Yes, sir, I did.

Q. How long after he had made his bid did you do that? A. I should say about a week. It was very promptly after the bids were in.

Q. Did you talk with Mr. Craven about examining his quarry? A. I did — not only before I went up, but after I went up.

Q. Before is what I am talking about. What did you say to him? A. Just what do you mean?

Q. You say you talked to him? A. We had quite a conference.

Q. What did you say to him? A. I showed him the bids and called his attention to the requirement of the contract that we should examine the quarry and approve of it. So he asked me to go up there with one of Mr. Lucas' men, Mr. Lucas was out of town, to make this examination.

Q. Who was the other man? A. Mr. Goodwin.

Q. Did Mr. Tomkins know you were going up to examine his quarry? A. Yes, sir.

Q. Was he there? A. No, but I think it was his nephew that was there, a man who was in charge of the office at the time.

Q. Just tell us what you did when you examined the Tomkins quarry? A. We started in and walked all the way around the quarry. Watched them loading the stone and selected samples of the various parts of the quarry, and then we went to the crushers and saw the crushing process.

Q. Tomkins Cove is an interesting place to go to, isn't it? A. It is indeed. He has in his office a lot of the various kinds of stone that they produce in that quarry. He has a large case of samples.

Q. Do they produce various kinds of stone there? A. Yes, indeed, they do. Some of that stone you can take and crush in your hands. That quarry originally was the bed of an old river and some of that stone crumbles very easily. Parts of it are the color of trap or gray blue.

Q. Some of it is hard, though, isn't it? A. Some of it is hard and some of it is very soft. These tests that Mr. Craven has put here before you according to the laboratories were the best samples. These sample pieces are sawn out of a piece of stone, and they necessarily have to be good pieces of stone to get out a perfectly square test piece, whereas in the actual manufacture of the stuff they couldn't go to that trouble in manufacturing just the pieces that would be hard and in good shape. The stone is full of veins of soft material.

Q. Do you mean to say that the soft and hard is intermingled in small chunks, or is it in sections? A. Not only in small chunks, but they purposely intermingle it. I watched that. They will load up their quarry cars, which are cars about half the size of this table with stone, and they have part of the blue stone, and then in order to get a good mixture of this blue stone and this

white stone, which, in my opinion, is inferior, they will take a big chunk of the white stone and throw it on there.

Q. You say that the white stone is inferior? A. The white stone, and these white veins through the stone.

Q. What do you say as to the examination of the blue stone in the Tomkins quarry? A. It is so mixed that you could not quarry the stone.

Q. What do you say as to the blue stone? A. Some of the blue stone is all right.

Q. What part of the blue stone is not all right? A. The part that is rotten.

Q. The exposed part of the blue stone is rotten, as we know. That is exposed to the air and rots, don't it? A. Not only exposed to the air, but exposed down through these veins of the white stone.

Q. Now, leaving out the rock, leaving out everything else, what about the blue stone; does that answer all your requirements? A. The best part of the blue stone would.

Q. Now, what do you say as an inspector for the Public Service Commission as to whether or not it was possible to produce blue stone from that quarry sufficient to answer the requirements of the bid on the Public Service Commission contract that we are discussing? A. I think if you would ask the Tomkins quarry man that he would tell you that it would be a physical impossibility to quarry out of that quarry a sufficient quantity of perfectly good stone that would live up to our specifications.

Q. There is no such thing as perfectly good stone; leave out the "perfectly." A. Stone suitable for our purpose.

Q. You say that is impossible? A. That would be physically impossible?

Q. Commercially good stone that would answer that purpose? A. That is correct. That would be commercially impossible. You get the quarry man, and he will tell you the same thing.

Q. How wide are those white veins that you speak of? A. They vary from very small fractions of an inch to feet. One vein that I saw was about eighteen inches to two feet thick.

Q. You don't question that they could dodge that vein? A. They could dodge that particular vein, but they couldn't the smaller ones.



Q. That little one would only represent what would ordinarily be the dust and small particles of any crushing operation, wouldn't it? A. Yes, sir.

Senator Thompson.—We are perfectly familiar with this talk of blue stone and limestone and white stone. It is all familiar to me, because there are a lot of quarries up the state and they come from that part.

Mr. Craven.—If any other bidders want to come in, and have a good quarry, our contract is always open to anybody.

Senator Thompson.—I notice some quarries have the proper blue stone and everything all right until the administration changes, and then the other quarries seem to be the ones best able to supply proper stone. We will work this out tomorrow.

I want to mention that Mr. Shaw states that the reason of his presence here is that Mr. Sullivan told him yesterday that he had been inquired of about this matter and that Mr. Shaw came here to see what form the investigation was taking as he wanted to go out of town tonight and did not want to go if he was required.

We will suspend now until eleven o'clock tomorrow morning.  
(Adjournment.)

#### MEMORANDUM BY HENRY B. SEAMAN.

On re-advertisement of Sections 8, 10, 11 and 13 Subway—Lex. Ave. Route.

(May 31, 1916.)

Mr. Harkness calls attention to the fact that a saving was effected on Sections 8, 10, 11 and 13, because of changes, simplifications and reductions in the plans. This saving may have been entirely feasible and proper but should not be confused with the further saving which could have been effected by re-advertisement—and reduction in contractor's unit prices. A reduction due to change of plans may be accomplished by a possible sacrifice on the part of the city; but a reduction due to change of unit prices would be accomplished only at the expense of contractor's profits.

The comparison of prices obtained by re-advertisement of Sec.

9 showed a saving of 14%. A comparison of original prices of Sections 8, 10, 11 and 13 with prices of adjacent sections obtained by re-advertisement, showed a saving of 16%, 14%, 12.9% and 18.8% respectively; or an average saving of 15.4%.

The final costs of Sections 8, 10, 11 and 13 under prices obtained *without* rebidding, should be reduced 15.4% to show that further saving which could have been accomplished by re-advertisement.

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### JUNE 6, 1916.

Meeting called to order at 11:30 A. M., Senator Thompson presiding.

Testimony of FRANK J. SPRAGUE:

Cross-examination by Mr. Moss:

Q. Mr. Sprague, what is your profession? A. Consulting Engineer and inventor.

Q. Mr. Sprague is far from egotistical, therefore, I say for him that he is one of the most noted Engineers in the City of New York.

Q. Now, Mr. Sprague, the reason why I have asked you to come here this morning is that you once made an offer to construct a subway in the City of New York. I have here a copy of the letter of Mr. Sprague to the Chairman of the Public Service Commission, dated November 11, 1910, and I read at this point the concluding phrase of that letter:

“I am prepared, if such construction is undertaken on sound engineering plans, to put up a certified check of material amount, as a guarantee that within sixty days of the receipt of acceptable bids for construction, I will bid independently of the Interborough interests for the operation of this proposed line on a basis of city participation in management and profit, and an offer of exchange of passengers with the existing subway system on an equitable basis.”

Of course, you did not cease to be a practical man when you made that proposition? A. I did not.

Q. You intended to live up to it and could live up to it? A. Absolutely.

Senator Thompson.—When was that made? A. November 11, 1910, the letter was written.

Q. (By Mr. Moss.) Before the letter is put in evidence as a part of the record, I would like to have you explain the nature of the proposition that you made and the basis of reasoning for that proposition. A. Perhaps, I will have to go back of that date a little bit. I will have to go back of that date a little, Mr. Moss.

Q. Now, please feel entirely at liberty to present this matter just as though we were the Public Service Commission. A. All right, sir. You probably remember that in the fall of 1910 —

Senator Thompson.—Put it on the record again this morning, and send a transcript of the record to the City Hall, that this Committee has concluded its investigation into all matters brought before it by the Mayor. A. (By Mr. Sprague.) In the fall of 1910 the Public Service Commission, of which Mr. Wilcox was Chairman, had formulated plans for the construction of what is called the Tri-Borough route. He was somewhat ambitious and began nowhere and ended nowhere and it was fundamentally designed as a rival of the Interborough Company, to be built by private capital, on the understanding or the belief that the city did not possess power enough to compel the Interborough to extend the system into what is now known as the "H" system complete, and protect itself. I didn't agree with that. It seemed to me that the City of New York with its enormous power, the means of borrowing capital at low interest, with its engineers, with its rights over franchises, both extensions of the underground and elevated franchises, was in power, much more so than capital would be of compelling almost any reasonable agreement. When Mr. Wilcox's Commission issued specifications in October, I think, or about October, 1910, I noticed that these plans which had been prepared practically in secret; that is, the engineering world didn't know them, provided for two things; first, the submission of estimates by private capital for the construction and operation under the conditions of this new system of Tri-Borough; second, the bids to be submitted on the twentieth of October, 1910, and that as an alternative an original Tri-Borough route could be bid upon, in

sections to be built by the city money. I don't know whether cussedness or my particular interest in the Rapid Transit problem, which I have manifested in many ways for ten or twenty days has been responsible for a good many of the programs — actuated me, but —

Q. Well, you have constructed electric lines yourself haven't you? A. Well, I built the first trolley lines and a system which the elevated railroad and all elevated railroads are operating now, which I devised.

Q. Sometimes called the Sprague system? A. Why, in fact all the railroads are operating under those patents. I am somewhat qualified as an engineer to pass upon the character of the contract and the plans which had been issued, and I prepared a paper to be presented before the American Institute of Electrical Engineers, and I invited the participation of other societies like the Civil Engineers and Mechanical Engineers and the Mayor of the City of New York and Mr. Wilcox and the members of his Commission and the various members of the Board of Estimate to be present at a public discussion of that paper, held at the United Engineering Building. Most of them did not accept, but there was a very considerable meeting at which my stand was attacked. The outcome of the work of the Commission was upheld by many prominent Engineers and my predictions, made at that time were entirely fulfilled. The attitude I took was this, if I may read. As I said I assumed in the first place that the city had in its power to compel the Interborough Company to put in anything that was logical. The development was to complete and make new further extensions at the end of the line. That is really what is called the "H." I want our record to show that, a line running up Seventh Avenue, a parallel line running up Lexington Avenue and then a Cross-over somewhere in the neighborhood of Forty-second Street, which would be the middle line of the letter "H." That was the formal development.

Q. It probably was. Could they get it? A. They had to get it, either by agreement with the Interborough or build a line which eventually could be combined with operation of the Interborough for the same results. The Tri-Borough didn't offer that at all, and after I called attention to these possibilities and considered

the possibility of failure on the part of the city to go in with the Interborough or compelling an agreement, I suggested what is called a reverse rule, and if I may very briefly refer to that I will quote what I said at that time:

“An Alternative Route, the ‘Reverse.’

“Destructive criticism, where progress is essential, falls short of its proper function unless it has something constructive to offer. Let me, therefore, assume that, whether because of obstinacy, greed, or over confidence, the Interborough, contemplating perhaps the contingency of the non-receipt of acceptable bids on the present outstanding invitations, and under the stress of the popular cry for relief hoping to get its valuable elevated franchises, with later its desires in the matter of subway extensions, elects to play a waiting game;—or on the other hand, that the Public Service Commission, zealous as it should be in behalf of public interests, but not viewing with true perspective the measure of those interests, seeks to drive an impossible bargain. These two interests thus having come to an impasse, how can the Public Service Commission bring about the ultimate merging of the present subway system and a new one built under its direction with city funds without sacrifice of the general interests?

“The answer seems simple: To select a route which will command ample traffic, plan it so it can be built at the minimum cost and in the shortest time, and design it so that it can at any time be merged with the present subway system into a composite one—in short, be a system which would command competitive building on its present and prospective merits, especially if built with city funds for construction, and private funds for operation under a reasonable franchise. Such a route I will call, for want of a better name, the Lexington-Seventh Avenue, or ‘Reverse’ Route, because of its relation to the line of the present subway.”

Q. That would finish the unfinished part of the “H?” A. It would, and in the conclusion of that article I made decisions which apparently will be borne out later. I predicted that we never would get any private bid for construction and operation under the Tri-operation proposition and there wasn’t any. As a result

seven days later other bids came in for the construction of sections. Of course, that Tri-Borough system is now dead as far as the original plan was concerned.

Now, there were two projects that the city had to consider. About this time McAdoo, who was the head of the Hudson-Manhattan Company, made a somewhat novel project to the city; novel, in that there was the question asking for a prior lien upon the subway system earnings. He proposed to accept a part of the Tri-Borough system which had been built by city funds and have the city advance additional money enough to extend the Hudson-Manhattan from Thirty-third Street over the line, under which it was obligated to extend its line at its own cost to the Grand Central Station and then he equip it himself with private funds, provided they got a guarantee in the nature of a prior lien upon the earnings of the entire system. Well, that project at first seemed ridiculous to assume that the City of New York would accept such a thing. Yes, but Mr. McAdoo was hailed as the savior of the subway situation. Of course, Mr. McAdoo wanted to, well, at least it was said that he wanted to root and grow. (Yes, I adopted it myself.) Of course, his proposition was not only to equip the road, but also to get the city to provide the money for the extension of another road which had never been extended and probably never will be now. Well, after a while Mr. McAdoo withdrew that proposition.

Q. It had a time limit in it Mr. Sprague, and it lapsed. A. Yes.

Q. Pardon me, it appeared in some testimony here the other day, at least a reference to the fact that Mr. McAdoo was present at a meeting at the Arts Club with Mr. Wilcox and other gentlemen who discussed the subway situation before those high-browed gentlemen that assembled. I go to the Art Club myself sometimes. Mr. McAdoo twitted Wilcox publicly, thereby saying that nobody could get it away from the Interborough. It was intended for the Interborough. A. Well, meanwhile, the Interborough —

Senator Thompson.—Is there a record somewhere of this McAdoo offer? A. There ought to be.

Mr. Moss.—Oh, yes, there is a record, we have that. I don't know that is in the record, but it is in the printed report of the

Public Service Commission, first volume of 1910. A. (Continued by Mr. Sprague.) Well, about this time the Interborough Company made another proposition for the extension of the subway on an indeterminate franchise basis; the city to supply a certain amount of money and the Interborough to supply a certain amount of money and the Interborough to have a certain prior lien on earnings. In that proposition the city was to have the first five years' earnings absolute and divide even after that, but without that awful system of preference that now exists so much at least. Well, Mr. McAdoo's proposition was withdrawn and they left the city with only two propositions to consider; the Interborough on the one hand and the Tri-Borough System on the other. Well, I am a railroad man in one sense at least, and it occurred to me that if the city was willing to allow sufficient lien upon earnings to —

Senator Thompson.— We will adjourn to the Coroner's Court Room.

(Meeting resumed in Coroner's Court Room.)

A. (Continued by Mr. Sprague.) It occurred to me that I might get men together who could be independent of the interests then concerned in subway matters, independent of the Interborough and all interests, perfectly independent, whose object would be to form an equipment and operating company which would equip a line which would meet our approval, both as to route and construction, and to operate it in the highest possible manner; the city supplying the money for the actual construction of the subway and loaning it, of course, and we dividing the profits after certain preference had been received by ourselves. That proposition was made formally on January 25, 1911, the proposers being myself and former associate, Mr. Oscar T. Crosby. It was a proposal for the equipment and operation of an independent city-built Rapid Transit System. I wanted to show good faith, and so I offered to lay down a certified check of one hundred thousand dollars, that within sixty days, we would put up a bond of a million dollars or securities equal to it, that we would carry out the contract in every detail that we agreed upon or would sacrifice both. The proposition was not received as seriously as intended. There seemed to be no way to accept a certified check, although, that was

the demand upon contractors who wanted to build a few thousand feet of the subway.

Q. Was something said about the check? A. No, no, it was simply my whole motive.

Q. Who attacked it? A. Well, I am sorry to say, Moss, all the newspapers.

Q. Among the city officials? A. Well, they did not take it seriously, I suppose, because I hadn't come with a brass band and several banking concerns back of me, but I was perfectly prepared in the way I had said.

Q. Well, you had conferred with banking interests so that you had an actual proposition? A. We were perfectly prepared to give the evidence of good faith in laying down a certified check and that is something nobody else would do.

Q. And did you see the officials yourself, or some of them? A. Copies of this proposal were sent to the Public Service Commission and also to various members of the Board of Estimate. We, of course, put a clause in which gave us the right after a reasonable time and after reasonable notice to withdraw it. In fact, on the very next day, and due to some of the attacks which were made upon me by men who knew nothing of my responsibility, I wrote a letter to Mr. Wilcox, which I thought stated my position quite clearly. I will either submit it or I will read the letter, either one.

Q. Both, suppose you read it and submit it as well. A. This letter was January 26, 1911, addressed to Mr. Wilcox, the Chairman of the Public Service Commission:

“Dear Sir: Supplementing the Proposal made to you yesterday, and to promptly correct certain errors, some of which unfortunately, but of course untruly credited by inference to members of the Public Service Commission, permit me to state as follows:

“First. Not only am I not now, and never have been a consulting engineer of the Interborough Company, but I have never been connected in any professional or business way, whatever, directly or indirectly with that company, or any of its subsidiary or related interests, or with the business of any member of its Board of Directors; nor have I any business



or professional relations with any of the officers, not being even personally known by its President.

"Second. The Proposal made is not as representative of, nor in the interests of, the Interborough Company or its backers, nor of the McAdoo interests, nor of the coterie of contractors waiting for the opportunity to put their forces at work, nor of any steam railway company entering New York, nor any political group, nor were any of them even aware of the fact that a proposal was to be made by me.

"Third. There are, however, a good many other people in the world who are ready to invest money in transportation projects if they have confidence in those having charge of the same and see a reasonable prospect of making money, for the business of transportation is like any other — a good thing to go into if a safe return is assured and likewise a good thing to stay out of if there is much doubt about it. In short, an enterprise of this character in the City of New York is to be considered by those who would put money into it precisely as any urban or interurban proposition would be any where else.

"Fourth. The business of equipping a subway, in every detail from track to power house, is the province of the consulting and constructing electrical engineer. That is my business and that of many of my friends, and among us we have affiliated financial interests who are amply able to carry out any undertaking to which they obligate themselves. Until recently I had not intended to have anything to do with the subway situation, except as many times in the past from a critical engineering and constructive standpoint, believing that, in spite of what I still consider errors of judgment, the city with its enormous powers could effect a solution satisfactory to itself. As matters have developed, however, during the past fortnight, it has seemed that I might make a proposal which would be a bridge on which could meet both extremes, that is, those who strongly and conscientiously believe in the construction of an independent system under ample city control with indeterminate franchise, and those who realize that ultimately there should be a single system nor-

mally developed, with a universal transit and transfer for a single fare.

“Fifth. My proposition provides for putting up \$1,000,000 as surety that the contract proposed can be carried out, and also, if the authority exists to receive the same, the putting up of \$100,000 cash as a forfeiture, preliminary to any actual negotiations. This is following the requirement exacted by the Public Service Commission when they recently asked for bids for the construction of the early Tri-Borough System. An ample bond and forfeiture are usually considered evidence of ability to carry out a contract. For the present any discussion necessary will be by me, for those who are associated with me, while being as I have stated of entirely independent connections and quite able to financially do what has been offered, do not wish to be the subject of pressure or influence of any kind.

“If the time comes when, as the result of agreement on a contract, it becomes necessary to put up a bond as proposed, I will then give ample evidence of independence, and with the conditions, if need be, of forfeiture of deposit, and withdrawal of conclusion of contract.

“Respectfully yours,

“(Signed) Frank J. Sprague.”

I received no reply from Mr. Willcox.

Senator Thompson.—(To Mr. Moss.) Have we that on file?

Mr. Moss.—We have never heard of this. This is a proposition which is not in any report of the Public Service Commission that I recall.

Senator Thompson.—Send over to the file.

A. (Continued by Mr. Sprague.) I had to write pretty frankly to Mr. Willcox at that time because when my October paper was presented I was subjected to attack by some of my newspaper friends and my interest inside the City Hall. I had occasion to write to Mr. Prendergast a letter which made it, I thought, rather impossible for him to criticise me in the future. On the second of February, 1911, I submitted an additional memorandum to the

Public Service Commission at a hearing which was held on that date. It was submitted simply in writing or rather a written communication after it was printed. I think it was printed at that time and copies were sent to all the Members of the Board of Estimate and the Public Service Commission. These two proposals, rather proposal and a memorandum, contained tables of comparison affecting the proposal of the Interborough, the McAdoo interests and my own. These tables showed what was possible for various net earnings, running from one to eight million dollars a year, compared the financial features of the Interborough, the McAdoo and the Sprague proposals. It analysed the total preferences ahead of any surplus profits to be divided with the city and told how they would be divided, and showed to my satisfaction at least, that we made a proposition which was better for the city than anything which had been made up to that date.

Q. Before you get past that, will you kindly state how your proposed route differed from the Tri-Borough route? A. Well, the main part of the Tri-Borough route, simply leaving out the extensions into the Bronx and Brooklyn, followed the Lexington Avenue above Forty-second Street, and came down one block East of the present Fourth Avenue subway to the lower end. So it was within a block of the lower half of the Interborough and, of course, takes half the city width from the upper half. The line I proposed, taken as a main part, followed the same Lexington Avenue route down to Forty-second Street, then continued down to Forty-third, crossed Thirty-fourth, down Seventh Avenue and over to Brooklyn through an extension from Seventh Avenue up to Forty-second Street, it being identically the line which we proposed for a straight System with the addition of the Thirty-fourth Street cross Tunnel line which was necessary, of course, to be considered as an independent proposition. I have here the copy of the proposal, the map showing briefly what it covered, and a text giving certain general statements and tables and the Memoranda which was dated February 2d.

Senator Thompson.—I would like that in the record, if you will let us have it.

At this point copy of the Sprague-Crosby proposal, including

map showing briefly what it covered, various texts giving certain general statements and tables, and the Memoranda on the Sprague-Crosby proposal, dated February 2d were entered in evidence as exhibits, marked 1, 2, 3, 4, 5, and 6, respectively.

A. (Continued by Mr. Sprague.) My route required the city to put up less money and offered a higher proportion of surplus profits to the city. The advantage to the city would have been very great. These lines would all have been profitable. There is no question about it. They would have been profitable to the city itself.

Q. Do you think, Mr. Sprague, that there was any reason or any cause whatever to have this Sprague route straggling out all over creation? A. Absolutely not.

Q. With unprofitable ends and extensions, what do you think about that? A. The present system as proposed?

Q. Yes, as being constructed. A. Well, for the present—

Q. Pardon me, before you answer, I am calling upon you as a practical railroad man, a practical engineer to express an opinion upon this exceedingly expensive route that has been planned being constructed now and I direct your attention to the large portion of it which is in outlying districts and which cannot be profitable for some time to come. I wish you would express yourself fully on that. A. Well, my knowledge of the system as laid out now is not a detailed one. After these propositions to which I refer began, made no headway and were withdrawn, I was thoroughly disgusted with the whole project and had my own business affairs so I dropped the matter, and I only followed in a general sort of a way the outcome of the activities in the Interborough and the Rapid Transit Company and the compromise which was decided upon by the Public Service Commission and the Board of Estimate.

Q. Well, let me ask you this question, which occurs to me, not as a railroad man but just as—I was going to say, as a lawyer we are supposed to know a little about all things. How does it strike you, building outlying sections first and leaving trunk lines unfinished? A. Well, I don't suppose there is an engineer in the world or a financial man in the world outside of those, that can

find any possible excuse for the manner in which the present subway is being built; for the millions of dollars of interest charges which are piling up, without any earnings, some sections are finished and others unfinished; port delays which occur in arriving at a satisfactory engineering solution of some of the problems which do arise and getting them to work; and besides there are questions of a great many millions of dollars of wasted time, material and energy, and are still being wasted. Now, for instance, the line in Queensborough is practically finished, but there is nothing to connect it with. Well, the Tri-Borough route itself ended nowhere and began nowhere. It was in the air. The Lexington route, I imagine, was very largely advanced now.

Q. Then there are good lines up in the Bronx where the contracts have only just been awarded, and in Brooklyn the same way? A. In short, Mr. Moss, the road, if it had been run by a private corporation would never be built as it is built now, simply because a private corporation would have to supply the money and carry the interest charges and they would have made the line pay as they developed it.

Q. (To Mr. Quackenbush) Do you seriously differ with this witness upon the statements just made? A. (By Mr. Quackenbush.) Expressing my personal opinion above it I think that consistency requires me to say that I do not.

Q. You don't disagree? A. No, sir.

Senator Thompson.—Well, I want to call attention right here to this: All the information that this Committee has developed on the subject of these dual contracts—on the subject of the administration of them—since they were executed and on the subject of how they were entered into, has all come from parties interested in the proposal and in the contracts themselves; that is, friends. Information that the Committee has elicited to date has been from friends of the dual subway contracts, either the railroads were operating them or the Public Service Commission and the Board of Estimate, which entered into them and consequently are friendly.

Mr. Quackenbush.—Mr. Chairman I have no friendliness.

Senator Thompson.—We haven't attempted to hear from the

outside on these questions, everything came from the Public Service Commission, the regular officers of the city, or the railroads themselves. Now, if this Committee has enlisted any criticism to the contract it has enlisted the criticism from the friends of the contract.

Mr. Moss.—Of course, up to Mr. Sprague's testimony.

Senator Thompson.—Yes.

Mr. Sprague.—Of course, you understand I am not here as a voluntary witness.

Mr. Moss.—I have called you here and told you I would subpoena you if you didn't come, but I knew you had made this proposition and I felt that it was time to begin to hear from some that were outside. You are the first one of that class that we have called, and I don't know anyone that has had a more intimate knowledge of it than you have. If you finish the statement of the negotiations you had, we will proceed then, please. A. (By Mr. Sprague.) On the sixteenth of February I wrote again to Chairman Wilcox, whom at no time did I see in connection with the proposition at all, calling attention to our proposition of January twenty-fifth, and also to the fact that there was a time limit in it. I have a copy of the letter here, if you care to have it for your file.

Q. Yes, if you please.

At this point the letter dated February 16, 1911, from Mr. Sprague to Hon. Wm. R. Willcox, Chairman, Pub. Ser. Com'n, First District, State of New York, was read by Mr. Sprague.

*"Feb. 16, 1911.*

*"Hon. Wm. R. Willcox,*

*"Chairman, Pub. Ser. Com'n,*

*"First District, State of N. Y.*

*"Dear Sir :*

*"On Jan. 25th, 1911, the undersigned, for themselves and associates, submitted a 'proposal for the Equipment and Operation of an Independent City-built Rapid Transit System.'"*

This provides for a time limit as follows :

*"This proposal is open to consideration for a period of*

not less than three weeks from the date of delivery, but the right is reserved of withdrawing the same on one week's written notice after the lapse of two weeks if no contract on the lines herein set forth seem likely to be concluded.

"According to the resolution adopted on January 31st by the Board of Estimate and Apportionment, its Special Committee was empowered to not only generally confer on the pending proposition of the Interborough Rapid Transit Company, but also to discuss with the Public Service Commission 'Such alternative routes, including independent routes, as may be presented.'

"On February 2d, in response to a communication from Commissioner Bassett, we met a sub-committee of your honorable body to discuss the details of our proposition. At that time, Commissioner Eustis expressed the opinion that, inasmuch as our proposal was for the equipment and operation of an independent route, he thought that it could only be considered informally, because the law required that for such independent route competitive bidding for operation was required. On this point it is to be noted that consideration of our proposal is no bar to receipt of other bids, and if there be such on the route laid out on the lines indicated by us, our last word has not been said on the subject.

"The question was also asked whether our proposal was intended to be considered only in the event of the rejection of the Interborough proposition, in reply to which query it was stated that it was intended to be considered not only in such a contingency, but also as a definite guarantee of at least one alternative bid on which the City could rely while considering the Interborough or any other proposition.

"The minimum time of three weeks for which the proposal was open has now expired, but up to the present time we have received no further communication on the subject, and all negotiations are apparently, possibly necessarily, for the time being, limited to the consideration of possible changes in the Interborough proposal.

"We have no desire to in any way embarrass the Commission or the Board of Estimate by any hastily considered with-

drawal if the spirit of the resolution adopted by the latter is what may be properly expected from its wording, but it seems proper that we should be soon definitely advised whether our independent proposition is to be ultimately put before that Board for its consideration.

“ Meanwhile, in the event of not being advised of such action, this communication is formal notification that at any time after a week from date we are at liberty to withdraw our proposal without further notice.

“ Respectfully submitted,

“ (Signed) Frank J. Sprague.

Oscar T. Crosby. ”

Q. (By Mr. Moss.) Did you receive any answer to that letter? A. On the seventeenth of February, the next day, I received a letter from Mr. Whitney, the Secretary of the Commission, acknowledging the receipt of the letter in which he made this statement : “ As was stated in the conference that you refer to, the law does not allow the Commission to accept your proposal or other similar propositions because provision is made that contracts for the building or operation of new lines must be put up for competitive bidding. ” In other words, it seemed that no independent project had the slightest hope of any consideration, either because of the restrictions of the law, or whatever reason. I don't know.

Q. Well, there was no competitive bidding any way? A. No. I replied to Mr. Whitney on the next day :

“ Neither Mr. Crosby nor myself have the slightest wish to in any way embarrass the deliberations of the Commission, but are reluctant that our proposal should possibly die of inanition.

“ We appreciate the point which has been made that competitive bidding is necessary under the law for the building or operation of new lines. Our proposition is a bid prior to any public request for such on the assumption that the City may decide for an independent line, and we wish in such case to designate the route and construction which, as traffic engineers, we would feel justified in seeming a contract to equip and operate.



"On the fifteenth of March I wrote Honorable George McAneny, who is a Chairman of the Special Committee on the Rapid Transit Proposals, and called his attention to our matters and said, 'I beg to inquire, therefore, on behalf of myself and associates, whether it is the intention of your Committee to consider the Independent Proposal made by us, and if you intend to call Mr. Crosby and myself in conference thereof, or whether the only proposals which will have serious consideration are those which constitute an extension of existing rapid transit systems.'"

Q. Did you talk to Mr. McAneny about that letter? A. I had an interview with him a very short time afterwards, but one moment; on the 18th of March I again addressed Mr. Wilcox, Chairman of the Public Service Commission and called his attention to the letter which I had sent Mr. McAneny, in fact, sent him a copy of it, and concluded the letter as follows:

"This letter is as yet unanswered. It was preceded some weeks ago by an unsuccessful request for a personal interview, in accordance with the publicly expressed desire on the part of Mr. McAneny to discuss with any responsible person the subject of rapid transit.

"Under the circumstances it is difficult to avoid coming to any other conclusion than that the Special Committee has practically decided upon awarding a contract to the Interborough, for the extensions asked for, in the confident belief that, despite this attitude of acquiescence in the main to the wishes of the Interborough that company is prepared to make concessions which are vital if the City is to retain control of its Subway development, a voice in the management of the Company and a proper interest in earnings."

I concluded this letter :

"In accordance with the tenor of our letter of February 16th, and the terms of our proposal of January 25th, 1911, we therefore, beg to notify you that we now withdraw the same as of the date of March 21, 1911. Should, however, the hopes of those now conducting rapid transit negotiations for any

reason prove futile, we will still be prepared to bid for the equipment and operation of any independent line which appeals to our judgment."

I had on the same day written to Mr. Crosby, my associate, and told him that this letter was going to be forwarded, and I notified him by it that it would be withdrawn for that proposition.

Q. Does that complete your negotiations, or attempted negotiations? A. Yes, I withdrew entirely. I had one interview with Mr. McAneny.

Q. I would like to have that interview, please. A. I don't recall the date. It was about this time. I think there is somewhere a letter from Mr. McAneny that I will have to look up, I am not sure, nor do I recall in any detail the interview. I called at Mr. McAneny's office. Here I have a copy of the letter. It is in answer to my letter which I just quoted extracts from, under date of March 21, 1911: "Dear Sir: I have to hand your letter of the 18th instant enclosing a copy of your letter to the Public Service Commission, withdrawing the offer of yours and your associates in relation to the contract of the subway system." In conclusion he goes on to say, "I have been so pressed of late that it has been difficult for me to take up this matter and possibly you could telephone to my office on receipt of this and I will be able to make an appointment with you." After I made this withdrawal I called on Mr. McAneny and walked up town with him and I chatted generally on the subject with him.

Q. Well, with the exception of that courteous response, I judge from your testimony, you got the cold shoulder from the city officials, from the Public Service Officers? A. I did.

Q. Was any practical objection to your proposition stated by any one of them? A. No, sir, it couldn't be.

Q. I would like to put into evidence the letter of November 11, 1910, to Mr. Willcox. It seemed to be the initiation of this proposition. (Mr. Moss read letter to Mr. Willcox, including letter to Mr. Shonts, on pages 28, 29, 30, 31 and 32, of Exhibit No. 2, communication from Frank J. Sprague.) This is the letter which you wrote to the President of the Interborough Rapid Transit Company. I call your attention to that because as far back as November, 1910, that idea of having the city represented in the

Board had been definitely proposed and had been brought to the attention of these folks by competent authority. It has been done in the city of Lockport for over seventy years, on the same principle.

Senator Thompson.—But the City is either a partner or else isn't. Now, if the city is a partner, the idea of having a partnership run entirely by the other fellows, is absolutely undependable.

Q. I go on a little further with Mr. Sprague's letter to Mr. Willcox in which Mr. Shonts' letter was: "If, however, the Interborough interests will not definitely renew their offer to meet the city authorities on some general basis of extensions with a fair participation of profits, then let the Public Service Commission, as I have already pointed out, do what any competent private corporation would do—instead of attempting construction of a partly competing route on extravagant plans, made still more so to the extent of nearly \$30,000,000 in the hope of getting a foreign railroad corporation to assume the burden not alone of the system but the added increase of cost—seize upon every strategic route sought by the Interborough interests which can be molded into a coherent workable system, construct it on sane lines at the minimum cost, so that it will attract and would maintain profitable independent operation, and when such is established compel joint operation, a reasonable voice in management and a fair division of profits." Did you refer to the New Haven Railroad then? A. That was the proposal.

Q. And the plans were made large enough to let New Haven cers in, weren't they? A. Yes.

Q. And then Mr. Sprague, in this letter, goes on to say, "So convinced am I of the soundness of this proposal from an operative standpoint, that if some general plan of rapid transit development with the present system as a nucleus cannot be agreed upon on the broad lines suggested, and it becomes necessary to build the competing line described, I am prepared, if such construction is undertaken on sound engineering plans, to put up a certified check of material amount as a guarantee that within 60 days of the receipt of acceptable bids for construction, I will bid, independently of the Interborough interests, for the operation of this proposed

line on a basis of city participation in management and profits, and an offer of exchange of passengers with the existing subway system on an equitable basis." Now it was your idea that if this "H" was completed, the city retaining the portion of it which it built for itself, the exchange of passengers, or an agreement for operating and transfer of passengers would come as a matter of necessity? A. That, in this through routing, of course, because both would reduce the cost of operation and add to the public convenience and shorten their general carriage. It was inevitable.

Q. And that would have been in operation by this time, wouldn't it? A. Yes.

Q. Now, was the city to build these lines under your proposal? A. They were to build the subway, part of it, not equip it, under the indeterminate plan, the power house, cars and conductors, and everything else.

Senator Thompson.—What do you mean by an indeterminate franchise? A. Well, one that continues practically so long as the mutual agreement.

Senator Thompson.—It couldn't be determined at any time? A. They could recapture it any time they wanted it.

Q. (By Mr. Moss.) How much would it cost the city to build those lines which you would propose? A. It would cost the city about seventy million dollars.

Q. What lines would that have included? A. That included the route line which was indicated on the first page of that proposal.

"A 4-track one-level subway from Times Square and 45th Street down Seventh Avenue, extended, and through Varick Street, both of which sections can be built for less cost than a double deck line on Lexington Avenue below 42d Street; an extension thence through Church Street to Liberty Street, with two tracks to the Battery.

"A 4-track cross town connection through 34th Street from Seventh Avenue to Lexington Avenue.

"A 4-track extension from 34th Street up Lexington Avenue to 138th Street, with a connection for providing a future

extension through 138th Street and Southern Boulevard, as already planned; thence north from the 138th junction to 157th Street, to connect with a future 3-track elevated up River and Jerome Avenues to Jerome Park Reservoir.

“A 3-track extension from Liberty Street, through separate tunnels under the East River, to Flatbush Avenue and Fulton St. via the Manhattan Bridge Brooklyn extension, and then out Lafayette Avenue to Broadway, or out the Eastern Parkway, as may be agreed.”

Q. Wtll, then you would have had solid construction begun at once and completed with reasonable speed the trunk line where the congestion has been the greatest and needed the outlet to the largest degree? You would have had that accomplished with no interference with the projects of adding extensions in the outlying districts as they might be needed? It would have been accomplished without tying the city up to a three hundred million dollar expenditure, you would have had something immediately profitable?

Senator Thompson.—It wouldn't have reduced the earnings of the present subway below a sufficient sum to pay the city every obligation that they owed the city. A. Yes.

Mr. Moss.—And there could have been no preference exacted by reduction of earnings. I think that summarizes the proposition as it was in your mind.

Senator Thompson.—In the back of that (Exhibit 1) there are some comparative tables that elucidate the situation as between the McAdoo offer and the Sprague offer. They don't seem to compare, however, as between the present contract which probably wasn't entered into and made in shape at that time when those tables were made. I wonder if those tables couldn't be compared to the operations of the present contract? That kind of an analysis ought to be made but it has never been made in that form. There are half a dozen tables here. There is a comparison of the financial features, including, capital supply for, prior lien on net earnings, future surplus profits and division on the then Interborough, McAdoo and Sprague propositions. The remaining tables bear upon comparisons of the McAdoo and Sprague sys-

tems. According to those tables I assume the McAdoo offer was a better proposition for the city than the present contract so far as the profits are concerned? A. I would not want to make a statement as regards that, Mr. Chairman, as I have not followed the complications.

Senator Thompson.— But in any event from those tables it appears that it would go into an earning. A. On those original proposals the McAdoo had the highest total amount of surplus profits before a division.

Senator Thompson.— That is based on the passenger carrying assumption that would have been in effect on the completion of the tracks here and would have produced a net earning of eight million forty thousand dollars a year. A. That was based upon simply a consideration of the money invested, both money and profit.

Senator Thompson.— But up here in table No. 1, what about that? A. Well, that doesn't affect anything.

Senator Thompson.— Then, we get over here and assume eight million forty thousand revenue; your plan would have paid the city one hundred thousand dollars for net profit after taking care of it.

Your proposal would have made the city a million dollars right off the reel a year? A. Yes, assuming that they got an earning of eight million forty thousand dollars.

Referring to those I think it is only fair to make the statement of what was proposed at that time. The Interborough proposed about fifty-three million dollars and they proposed forty million dollars themselves; McAdoo proposed that this city should put up ninety-six millions. The total charges ahead of any surplus profits at that time indicated practically on the Interborough seven million, McAdoo eight million, Sprague six million three hundred forty-seven thousand five hundred; the division of profit equal to it—the McAdoo and Interborough and the proportion of two to one in favor of this.

Senator Thompson.— Now, I wonder if these plans of this counsel—I wish Mr. Sprague would let us have a copy of this.

We would have Mr. Moss extend this comparative table in here and take it and make a comparison of the present contracts. A. I think it would be a good thing, that is the kind of comparison that should be made. That is not confused by bookkeeping.

Senator Thompson.—That is the reason I like it. It is a simplified comparison that ordinary people can understand without having to be educated both as an engineer and as a lawyer.

Mr. Moss.—Of these reports that I find from the Public Service Commission, when they finally get from the Public Service Commission, they are so complicated you have to read them and then probably can't understand them.

Senator Thompson.—I know I can't, and if I was a lawyer and engineer too, perhaps I might be able to understand them.

Q. (By Mr. Moss.) Did your final proposition in the city include the method of dividing profits? A. Yes, sir.

Q. How were profits to be divided? A. In a proportion of seventy-five to the city and forty to capital, after prior lien.

Q. Seventy-five per cent.? A. Seventy-five to forty.

Q. Seventy-five per cent. to the city on the ratio? A. After the prior lien had been taken care of.

Q. What was the prior lien? A. The prior lien, well, the prior liens at that time, and I correct the statement I made about the Interborough and McAdoo, the prior liens were largely in favor of the Interborough at that time. There was a total amount of surplus profits which I had in mind while I was speaking but I omitted to take into account the city interests and the city sinking funds. The prior liens were four and a half million dollars Interborough, two million Sprague, and two and a half million McAdoo.

Q. What did yours include? A. Mine included interest at five per cent. on forty million capital.

Q. That is all. A. Yes.

Q. Interest at five per cent. on the capital used, and no guaranteed earnings? A. There were no guaranteed earnings; we were glad to take our chances on it.

Q. That was too good to be true? A. It was too good to be accepted.

Mr. Moss.—Now, I think, Mr. Chairman, if a man being ready to put up one hundred thousand dollars by means of a check and to furnish a million dollar bond and start in sixty days to complete that “H,” without any preferences, with no prior provisions except five per cent. on capital, and then the city take the profits at the ratio of seventy-five to forty, it was so simple, that it is a great disadvantage sometimes for people to be simple.

Senator Thompson.—Have you found out where it is over in the Public Service Division?

Mr. Moss.—We sent for it.

Senator Thompson.—Simple things like that would require the service of so many engineers as they have got over there?

Mr. Moss.—But Mr. Chairman, the way it impresses me is this, of course, we are hearing Mr. Sprague; we haven’t heard anybody else and it is within the possibility of reason or it is at least a possibility that there might be some objections to this plan, but he doesn’t seem to have been able to get a discussion of it. He doesn’t seem to have been able to get anybody to come forward and fight it or oppose it or question it or negotiate upon it. A. As far as the construction was concerned it was simply a common-sense plan to any engineer who knew anything about his business and he would favor us. The financial one was the individual, of course, to ourselves as has been followed according to the lead of Mr. McAdoo. He would have gotten the city to hail the idea of a prior lien.

Q. (By Mr. Moss.) From a practical standpoint, Mr. Sprague, both from the engineering viewpoint and from the financial viewpoint, what do you think about the scheme that led B. R. T. up into Broadway and Manhattan under the conditions that now exist? A. I think that if one compromises, that they, the city officials, thought it was necessary when two competing fields already wanted to get into the other’s territory. That is all there is to it, itself.

Q. But was the effect on the city good? It made a fearful load of preference charge against the city. It forced Interborough on demand and preference because its profits upon that proportion which it already had and were profitable, were threatened. The rea-



son seemed that. The Brooklyn ought to take a line at Manhattan and then fight it out between themselves, and as far as bringing about a universal fare, it didn't work at all, did it? A. No.

Q. Well, did it occur to you as a student and observer of affairs at that time, that the B. R. T. had its champions and the I. R. T. had its champions and they fought it out and finally compromised. A. It looks like it.

Senator Thompson.—The division of profits under the Sprague plan was like this : Out of every one hundred dollars profit the city would get sixty-five dollars and twenty-two cents and the Sprague interests or Syndicate would get thirty-four dollars and seventy-eight cents. Of course, that was after, that is figuring on your seventy-five and forty.

Mr. Moss.—But you have to take the preference out first.

Mr. Chairman, before you adjourn, I asked Mr. Whitney to be present this morning to testify regarding the points of an interview that were published in the World and Sun, but he is busily engaged and asked to be excused until Thursday afternoon or Friday ; but while Mr. Quackenbush is here, I want to just refer to the subject upon which he was to be examined and upon which we shall examine him. I do it in Mr. Quackenbush's presence because we got into that phase of it rather unexpectedly the other day when we were looking at his briefs on the business situation. According to Mr. Whitney's remarkable interview, the city is up against it in such a way that, it being a partner now in this subway enterprise, must protect itself against large deficiencies and large, necessary tax levies, even to the extent of watching the Interborough, and I suppose, the B. R. T. payments to claimants, defendants or damage suits, even to the extent of watching the demands that are made by railroad employees for enlarged salaries and shorter hours, upon the ground that the city is in a contract which has elements of danger in it and it can't afford to be over generous.

The Secretary of the Public Service Commission sent over the original letter of Frank J. Sprague referred to by the witness, dated January 26, 1911, and in the same file appears a copy of an answer thereto, dated January 27, 1911, reading as follows :

“ Frank J. Sprague, Esq. :

“ Dear Sir.— The Commission is in receipt of your communication of January 25th, transmitting proposal of yourself, Oscar T. Crosby and associates for the equipment and operation of an independent, city-built Rapid Transit System and of your communication of January 26, 1911, with reference thereto, and the matters now under consideration by the Commission.

“ Very truly yours,

“ TRAVIS H. WHITNEY

Secretary. ”

Q. What were the banks that financed the B. R. T. notes?  
A. (By Mr. Sprague.) Three banks—the bankers who financed the B. R. T. notes were the Central Trust Company, Cuhn-Loeb & Company and Kidder, Peabody & Company.

Suspension until 3:30 P. M.

#### AFTERNOON SESSION.

The meeting was called to order at 2:30 P. M., Senator Thompson presiding.

Senator Thompson.— Mr. Saul Saltzman, of 501 West 159th Street, wishes to bring a matter before the Committee. We will hear him now.

Mr. Saltzman.— I am not a lawyer and I don't know how to open this matter and how to go into it, but the Assembly and Senate authorized the Court of Domestic Relations, and I think it is more for political purposes than for justice. I will not go into any other cases that I know of, but I will cite my own case. My case is a case that resulted out of an accounting. The family of Mrs. Saltzman advised her to leave me, so she left me and left her children with me. They were with me for a period of four or five months. As a result they brought a law suit against me in the Supreme Court. In order to serve me with the papers it was necessary for her to kidnap the children and bring the case before the Supreme Court. A couple of months later the case was disposed of by Justice Gray. He denied her alimony

and counsel fee and separation. Three days later she went to the Court of Domestic Relations and obtained a warrant for my arrest. The next day the case was tried before Judge Cornell. I called his attention to the fact that the case was heard before the Supreme Court and the children were stolen from me. Instead of dismissing the case they ordered me to pay \$5 a week. Naturally, the intention of the woman wasn't very much to have \$5 a week, but that her justice was properly administered, and in the Court of Justice I don't see how a woman can make a living out of \$5 a week. I called his attention further to the fact that she inherited a very large estate, and got all the product or our earning. That was no reason, but I think the Court is only existing for the purpose of being a political clearing house. The detectives who are making those arrests are looking in every man's hands to see what they can get out of a man for arresting him or testifying against him. It places a man on probation for a year, and if a man fails to report every week, I don't see why a man would ever live with his wife on these grounds. It isn't very material to sit on the case, is it, Senator?

Senator Thompson.—Well, of course, we wouldn't have any right to take up your case alone, because you can see that it is not of sufficient importance. Here's a committee of the Legislature which is only sent out in emergencies where it affects the rule rather than the exception, and to investigate one isolated case would hardly be allowed. In order for us to investigate a case, abuse of a public function must be shown, not that the justice is miscarried in one particular case. Then, after you have done that, you have got to show that it is the public function and that we have got the right to investigate it, do you see? And we haven't any right to investigate the Courts, and we haven't any right to investigate Domestic Relations. We have only the right to investigate the Public Service Commission and transportation and such laws relating to the public utilities as there are. We can't investigate a court any more than we can investigate the grocery stores or charities, which we can't do. All this matter before us of the Mayor is absolutely unauthorized; it is outside of our investigation. The only reason that it was heard was because of Mr. Mitchell being the Mayor

of the city. We can't investigate the courts, do you see? I can't investigate the Mayor; I can't investigate the city finance; can't investigate anything except the Public Service Commission. Public Service uncovers railroads and public utilities like gas and electricity, and telephones and telegraphs and things that are used as public franchises.

Mr. Saltzman.—But I have been to the Corporation Counsel's office and he thought that this court had perfect right to take up this matter, because it is practically to destroy a family.

Senator Thompson.—I think probably you are right about that. I haven't anything to say about whether you are right or wrong. But we haven't any right to investigate the courts; we haven't any power to do that whether they are right or wrong.

Mr. Saltzman.—What has the Committee a right to investigate?

Senator Thompson.—Just what the resolution provides. Our resolution provides that we investigate the Public Service Commission, the gas, electricity, telephone, telegraph. We have other committees out investigating other things. Your case could be heard by Senator Walters' Committee at Syracuse. Senator Walters is Chairman of that Committee. He would take this matter up for you. He has the authority to handle it. The thing for you to do, I think, is to get in communication with Senator Walters and see what he says.

Mr. Saltzman.—I'll write to Senator Walters and see what he can do for me. Thank you.

Testimony of MR. DANIEL L. TURNER.

Examination by Mr. Shuster.

Q. Mr. Turner, what is your official title? A. Deputy Engineer of Subway Construction.

Q. And you have under your immediate supervision determinations provided for in the dual contract? A. I have.

Q. One of the operating corporations in Contract No. 4 is the New York Municipal Corporation? A. Yes.

Q. And that is a subsidiary of the Brooklyn Rapid Transit Company, is it? A. Why, no, I don't understand that. The corporate relations of the various companies I hardly feel qualified to

deal with. The Municipal Railway Corporation is the corporation which the city has the contract for.

Q. Well, the negotiations with the city for the construction of the subway were carried on with representatives of the Brooklyn Rapid Transit Company, were they not? Is not that a fact? A. That is so.

Q. And some time prior to the entering into of the contract the New York Municipal organization was organized for the purpose of making the contract with the city? A. I understand that that is so.

Q. And the reason for that is that the Brooklyn Rapid Transit Company is not a corporation, is it not? A. As to that, I can't say.

Q. You are not familiar with that? A. No.

Q. Do you know when the New York Municipal Railway Corporation was incorporated? A. I do not, no.

Q. Well, there seems to be a record from the files of the Public Service Commission purporting to be the certified copy of the certificate of incorporation, and that is dated September 27, 1912, and doubtless that is the date of the filing in the Secretary of State's office of that certificate? A. I should assume so, yes.

Q. I will offer the certificate of incorporation of the New York Municipal Railway Corporation, which was signed or dated as of the 26th of September, 1912, recorded in the Secretary of State's office on the 27th of September, 1912,—that is offered in evidence, the original record to be put in. Will you furnish us with a copy of that? A. We will have some.

Q. If you can get a printed copy that will help us.

Senator Thompson.—That should be marked as an exhibit. (Certificate of Incorporation entered into evidence as Exhibit No. 1.)

Q. Do you know what was the necessity for the organization of the New York Municipal Railway Corporation? A. The point is this: In order to float the securities for carrying out the Company's part of it, it was necessary to have a first mortgage for the Company's properties taken over—the Brooklyn Union, and some others. There was a mortgage outstanding from the Brooklyn Union without any right of calling in the outstanding ones, so

that this financial plan was such that the Brooklyn Union gave to the New York Municipal the right to operate these lines and under it furnished a basis for the New York Municipal to take the subway contract. As soon as they secured the subway contract it made a first mortgage so that if the contract had been made directly with the Brooklyn Union the subway lease would go into existence and put in a new mortgage. As I understand the lease for the floating of this new company, it was really for the purpose of putting the company in a position of being able to give a first mortgage.

Q. Were those conditions understood by the Public Service Commission and particularly the conferees constituting, or rather representing, the Board of Estimate and the Public Service Commission in their negotiations?

Mr. Harkness.— They were.

Q. What additional financial or credit strength did the creation of this new company add to the Brooklyn Rapid Transit Company or its allied corporations upon which they knew a first mortgage could be made? A. I should say probably nothing beyond the ability to give a first mortgage; that is, the mere effect of incorporating the New York Municipal Railway Corporation didn't increase the financial strength of the B. R. T. system—it couldn't. The B. R. T. people said from time to time that it was very insistent and it would have to have some title to give us a standing. Mr. McAneny may have expressed the situation, and I think the facts of it are as I have stated.

Q. The former statement that you referred to of Mr. McAneny's was for public consumption, wasn't it? A. No, he never gave it out for public consumption. The B. R. T. people stated something about this time that I think was in Mr. McAneny's mind.

Senator Thompson.— Was this the company that gave the mortgage to raise the money to construct their part of the subway contract? A. Yes.

Senator Thompson.— Is that mortgage here? A. No, it is in the file.

Mr. Harkness.— The company has it on file.

Mr. Shuster.— We can have it here tomorrow.

Q. (By Mr. Shuster.) Have you any record in the Public Service Commission's file showing just what property, with its value, was placed under that mortgage? A. Well, the main one placed under mortgage was the subway lease, but I think you will find that the mortgage itself specifies undoubtedly all the valuations placed on the land.

Q. By that you mean the physical properties created by the moneys procured? A. No, the physical properties that were owned at that time.

Q. By whom? A. By the New York Municipal—some of it was owned by them. I can just give a very cursory statement of this financial arrangement so far as the mortgage is concerned, because it was handled by Mr. Sutton. There were some other things in connection with the matter that I haven't stated.

Q. Mr. Turner, I show you prior determination of November 24, 1913, in relation to contract No. 4, and ask you if that is a correct copy of the determination, rather of the prior determination as of that date made by the Chief Engineer pursuant to the provisions of contract No. 4? A. It is.

(Prior determination of November 24, 1913, entered into evidence as Exhibit No. 2.)

Q. That exhibit contains the result of the Chief Engineer's conclusions as to what should be allowed the New York Municipal Railway Corporation toward its share of contribution in the cost of construction and equipment of the railroads, etc.? A. Reconstruction of existing railroads.

Q. Under contract No. 4? A. Yes.

Q. Now, will you state just what steps were taken to procure that result? A. There is included in the determination against the lessee's contribution charges or costs chargeable against construction and equipment covering the lessee's expenses for superintendents for taxes and for interest. The lessee's expense for superintendence and for taxes are included in a bill which was submitted, I think, to the Commission.

Q. By whom? A. By the New York Municipal Railway Corporation. The bill was audited and reported upon and as a result

of such audit and report was included with the determination. The bill covered matters chargeable both to construction and equipment. The interest amount was also included in a bill submitted by the New York Municipal Corporation to the Brooklyn Rapid Transit Company and passed on by a resolution of the Commission and as a result of such resolution was also included in the determination.

Q. So that all of the items that are comprised within the allowance made in the prior determination aggregating \$2,615,000 were by arrangement? A. Not \$2,615,000.

Q. Are you sure? A. Well, now, I was looking at the determination for cost of railway; just a minute. Yes, you are right—\$2,615,000 is the amount.

Q. That was all the result of an agreement between the Public Service Commission and the New York Municipal Railway Corporation and did not pass through the ordinary process of investigation by vouchers and credit slips? A. Well, so far as the Engineering Department was concerned. I think that's correct.

Q. Yes, and the only thing the Engineering Department really had to do with these allowances was to rubber-stamp the agreement entered into between the Commission and the company? A. Well, I wouldn't put it exactly that way.

Q. Let us have it your way, then? A. I think the Engineering Department from an examination of the amounts saw no reason to object to the position taken in the audit, and, therefore, included it.

Q. What was the basis of original evidence of cost furnished to the Engineer by the New York Municipal Railway Corporation? A. The basis—well, the statements I referred to are in the determination.

Q. Have you in your files there the original data upon which the Chief Engineer acted? A. I think they are here in the files. I have before me the bill covering the superintendence, taxes, etc. of \$217,114.

Q. That is signed and approved by whom? A. That's approved by A. F. Weber.

Q. And under what date? A. June 30, 1913.

Q. What did you have to do with that individually or personally? A. Well, I think personally, I was probably at the confer-



ences, although I don't recall any specific conference at this time when those items probably were considered with other representatives of the Commission.

Q. Well, do you know whether that statement was submitted to the Chief Engineer or was it submitted to the Commission in the first instance? A. Well, now I don't recall about that.

Q. Probably Dr. Weber knows more about that. A. Probably Dr. Weber could tell about that.

Q. Well, do you know more about the interest allowance; have you any record there? A. I have a resolution of the Commission dated June 30, 1913, received from the Commission covering the interest matters, the substance of which was also included within the determination.

Q. And that was treated by your department and the Chief Engineer as a direction on the part of the Public Service Commission in the course of proceedings? A. Yes.

Q. And accordingly was approved by the Chief Engineer as such? A. It was.

Q. Were the details in any wise investigated by the Chief Engineer—I mean were the details investigated about the Chief Engineer, or your department; were they analyzed by Dr. Weber's department? A. I cannot answer as to that.

Testimony of DR. ADNA WEBER.

Cross-examination by Mr. Shuster:

Q. You are the Chief Statistician, I believe, Dr. Weber? A. Yes, sir.

Q. And you are familiar with the prior determination under contract No. 4? A. Yes, sir.

Q. The items constituting the lessee's superintendents' allowances seem to have your approval, under your signature; will you explain to us by what direction that matter was referred to you and received your ultimate approval? A. At some time after the signing of the contracts the matter of the amount to be included in the determination of the cost for pecuniary expenses as to financing the contracts had been discussed between the representatives of the company and the Commission. I have understood that numerous bills were presented, or at least were discussed, in-

cluding the note that the New York Municipal Railway Corporation gave to the Brooklyn Rapid Transit Company of about \$597,000.

Q. Do you know what that note was for? A. That covered an item of \$400,000 for a commission charged by the bankers who took the Brooklyn Rapid Transit notes and fees of counsel to the trustees and bankers amounting to about \$97,000. In addition to that bill there was also discussed a bill of some \$100,000 for advertising and other expenses of what might be called the publicity campaign of the Brooklyn Rapid Transit interests and bills rendered by the Brooklyn Rapid Transit Company or subsidiary companies to the New York Municipal Company for the services of their officers during the framing of the contracts.

Q. That is, the services of the Brooklyn Rapid Transit and allied companies, but not the officers of the New York Municipal? A. Of course, the New York Municipal had not been in existence at the beginning of the negotiations.

Q. Yes. So that the statement or bills which you referred to just now were bills containing items, most of which, if not all of which, had been contracted and incurred prior to the organization of the New York Municipal Corporation? A. By the Brooklyn Rapid Transit or some of its allied corporations, that is true.

Q. Now, have you those statements with you? A. Not all of these statements were preserved in their original form. In fact, not all of them came to me. The first statement that I saw—that I have a recollection of seeing—amounted to some \$322,000. I have a copy of that. It is not a very legible copy, I doubt if it can be entirely read, but it includes that \$322,000. That bill included what is here included in the later bill of \$217,000, plus \$101,000 for advertising and some minor items making up the difference.

Q. Yes; did it also include the \$97,000 you referred to for legal expenses? A. That did not.

Q. Now, the statement that you finally approved, that was a statement of items which were accepted as property items under the lessee's expenditures for superintendence, etc? A. As a result of these various conferences, I think it was virtually determined by the Commission that none of the advertising expenditures were properly included and that the others were, and I was

asked to make an examination of the books and check the bills with the books and vouchers. As a result of that examination this bill which has my signature was approved and forwarded to the Chief Engineer.

Mr. Shuster.—Mr. Chairman, I would like to read this statement into the record :

“ 35 Clinton Street, Brooklyn, New York, Mar. 19, 1913.”

(Q. That, by the way, Dr. Weber, is the date upon which the contract was entered into? A. That is true.)

“ New York Municipal Railway Corporation to Brooklyn Rapid Transit Company, Dr.

“ For expenditures between March 19, 1911, and March 19, 1913, between the city of New York, by the Public Service Commission for the First District, and the New York Railway Corporation, said expenditures being represented by vouchers submitted for inspection and examination and covering preliminary engineering, legal and administrative services and disbursements organization of New York Municipal Railway Corporation, printing, advertising, engraving, certification of securities, etc., but excluding interests on monies provided, organization, capital stock, \$1,000, directors and executive committee fees \$390, printing copies of certificates of incorporation \$95.55 filing and recording copies of incorporation \$39.20 miscellaneous \$19.05. The total is \$1,593.60.”

Senator Thompson.—What was that charged to?

Mr. Shuster.—To the city. This is charged to construction, under superintendence.)

“ Other tangible capital ; administrative affairs : T. S. Williams, \$50,000 ; Bullock, \$7,512.31. Other officers, \$10,000. The total is \$67,513.31 for administrative salaries.

“ Legal expenses, Parker, Hatch & Sheehan, \$15,000. Chas. A. Collin, \$3,800 ; P. J. Britt, \$2,000 ; G. D. Yeomans and employes, \$25,000. Printing, proof of subway

contracts \$1,218. Other legal expenses \$1,523.03. The total is \$48,541.03.

“Miscellaneous, \$1,458.01.

“The grand total of other intangible capital, including administrative salaries, etc., is \$117,511.35.

“Engineers and Superintendents: Salary of Jacobs & Davies, July, 1911, to March, 1913, \$42,674.70. Salary of W. S. Menden, July, 1911, to March, 1913, \$20,612.90. Services of W. J. Wilgus, \$2,500. Miscellaneous, \$3,091.49. The total is \$66,179.09.

“Right of way, statements of asset valuations and search records, etc., \$449.68. Printing, \$40,000. Gold notes and coupons, \$7,005. Services of Sid Graf, \$600. Services of trustees, \$20,000. Printing trust agreement, \$680.60. Printing mortgages, etc., \$2,592.35. Miscellaneous, \$720. The total is \$31,380.15; making a grand total allowed of \$217,114.”

Q. (By Mr. Shuster). Dr. Weber, did you ever submit vouchers for any of these items? A. Yes, there were vouchers for all of them.

Q. Vouchers for all of them, and to whom did those vouchers run? A. Most of them to the Brooklyn Heights Railway Company, as I recall.

Q. Were any of them paid directly by the New York Municipal Railway Corporation? A. No.

Q. So that all of these items represent obligations incurred by other corporations than the New York Municipal Railway Corporation? A. On behalf of the New York Municipal.

Q. Well, how do you know they were on behalf of the New York Municipal? Where do you get that information? A. I don't say that they were at the time they were made.

Q. Well, if they were not made on behalf of the New York Municipal at the time they were made, how can they be made proper and legal obligations under the contract? A. They were obligations in connection with the signing of this contract which underlies the construction work, and merely because a definite title, a definite organization of the corporation that was to sign

that contract had not been made at that time doesn't seem to me to be important. The corporation was finally formed to take up this work and pay these obligations in so far as they were recognized by the contracts.

Q. In 1911, when, apparently, some of these obligations were contracted, the New York Municipal Railway Corporation was not in existence. Do you know of your own knowledge whether the New York Municipal Corporation was even in contemplation in the minds of any of the conferees representing either the city or the Public Service Commission. A. In 1911?

Q. Yes. A. I think it was in contemplation because the language of the reports of the conferees as far back as June, 1911, referred to the Brooklyn Rapid Transit Company or a company to be formed in the interests of the Brooklyn Rapid Transit Company, so that proper legal steps were not definitely determined at that time.

Q. Do you know whether the Brooklyn Rapid Transit Company is in any way obligated, or its property and credit behind the building of the subway contracts under contract No. 4. Yes, the Brooklyn Rapid Transit Company has pledged certain securities in connection with the bonds of the New York Municipal. I think the bond is \$10,000,000, \$10,000,000 as collateral security to the \$60,000,000 that the New York Municipal has issued.

Senator Thompson.—Mr. Peter J. Brady is before the Committee, and he handed the Chairman a letter, suggesting that the Chairman read it into the record. So long as Mr. Brady is present, we will let him read it.

*June 6, 1916.*

"Hon. Geo. F. Thompson, Chairman,  
"Legislative Investigating Committee,  
"Municipal Building, City.

"Dear Sir.—Information has come to me that the telephone wires leading into the headquarters of a number of unions have been tapped by the Police Department and are included in the list submitted to you by the Telephone Company. I also have information enough to make me believe that a still greater number of wires have been tapped by the

Police without warrant than those which appear upon the list of the Telephone Company.

"Therefore, on behalf of our unions, and the working people generally, I must demand that your Committee either make public the list submitted to you or furnish me with the list of all labor organizations appearing upon this list.

"I must also respectfully insist that your Committee conduct a most thorough investigation into the operations of the wire tapping squad of the Police Department, and ask that you call upon the Police to publicly submit to your Committee their list of wires they have tapped without the knowledge of the Telephone Company.

"In making this demand upon your Committee I realize that your time is limited and that you have a great deal of work to do before the Committee goes out of business on July 1st.

"This is a very important matter to the unions of this state and it is on behalf of the labor unions of the whole country that I request that you give me a public hearing in order that we may determine by what right and authority and for what reason the Police have placed the unions upon their black-list.

"I believe I have privately heard the reason but that does not satisfy neither me nor the large number of persons who have complained to me and believe that you are the one to go to the bottom of this matter for me.

"Will you be good enough, therefore, to set aside a day when I can appear before your Committee?

"Yours very truly,

(Signed) PETER J. BRADY,

Secretary."

Senator Thompson.—Now, of course, this Committee hasn't had its powers enlargtd since this matter first came to the attention of the Committee, I mean the wire tapping subject. We are appointed under a resolution which is very broad in its terms so far as the Public Service Commissions are affected, such as matters affecting a railroad or any public utility like a telephone and

telegraph and gas company or electric company. We haven't, however, any power to investigate the Police Department, nor any power to investigate the city of New York as a city, and those matters would be out of our jurisdiction. We have, of course, taken a list which we have not made public for the substantial reasons, which I think you, Mr. Brady, if you knew what the list was, would agree with us that it is proper. Mr. Moss is absent this afternoon on business connected with the Committee and will be here again tomorrow morning, and I will take up your letter with him when he comes.

I will just make this statement because of the fact that there seems to be some misunderstanding at the City Hall as to the Committee pursuing this subject as a Committee and I made the statement a few days ago that the Committee had gone as far with it as we had authority to go and that the matter was closed. It seems that that information didn't get across the street in some way. I made the statement again, and now I will make it another time and have a copy sent over to the City Hall, so they will know that this Committee isn't going any further with this matter, because it can't.

Now, as to calling on the Police to furnish a list of unrecorded taps, I guess all the testimony in relation to that has been taken by the Committee in executive session and I think that probably we have no jurisdiction in that matter. You realize, Mr. Brady, that this Committee is limited in its power, we are Public Service investigators. A. I realize that and the telephone is a public service that is being used for that purpose.

Senator Thompson.— That has been demonstrated. A. It has also been demonstrated by your Commission that telephones are of practically no use by the people unless the rights of the people who use them can be safeguarded in some way. By your investigations into the operations of the Police Department and possibly the private detective agencies, the purpose for which they use the telephone should result in immediate legislation which will prevent such abuses of the telephone system as have been brought out in the revelations before your Commission.

Senator Thompson.— You see we have gone to that extent so far as the public utilities are concerned but to examine into the ques-

tion as to whether or not the Police have exceeded the powers that the Legislature granted them is beyond our jurisdiction. A. We realize the limits of your Committee in this connection. We also understand the Public Utility instrument, as they state, has been used to find out if a crime is committed.

Senator Thompson.—The Police part, I guess, has been confounded in the minds of some people, but that is a matter beyond our jurisdiction. A. Well, as a result of this investigation, do you think we will be able to discover as to whether or not we are in New York City, U. S. A., or in one of the little towns in Russia or Germany or some one of those other countries that happen to be at war at the present time, where espionage is carried on over the people and is very rigid.

Senator Thompson.—We don't stop at anything but I am afraid we haven't jurisdiction in this matter. A. Well, I wish you would let us know as soon as you can because if you can't get this, we will have to adopt some other method. We are just as persistent as your Committee has been and we are just as persistent in getting public light upon the practice of the Police Department regarding the work of our unions.

Senator Thompson.—I will take it up with Mr. Moss and he will communicate with you.

Q. (By Mr. Shuster.) Dr. Weber, I believe it was stated that the list of superintendents had been submitted and examined by you or your department. A. Yes, sir.

Q. What character of voucher was submitted in regard to the administrative salaries? A. That was in the form of a bill from the Brooklyn Heights Railroad Company to the New York Municipal Railway Corporation for salaries paid.

Q. That was the bill rendered by the Brooklyn Heights Railway Company to the New York Municipal and represented a part of the expenditures by the Brooklyn Heights Company for salaries of its executive officers? A. Mainly. That's for the administrative expenses.

Q. Well, that's what I am referring to. A. The same bill covered legal services also.

Q. Well, do you know what Mr. Williams' salary as against



the Brooklyn Heights Railroad Company? A. I don't know the proportion paid by the Brooklyn Heights Railway Company; his entire salary was distributed among the various companies in the Brooklyn Rapid Transit Company system at that time. It was \$50,000 a year.

Q. And the period for which allowance is made here is for two years? A. Two years.

Q. So that evidently the proportion was fifty-fifty? A. One-half.

Q. Now, did the Brooklyn Heights Railway Company pay all of that \$50,000 during those two years? A. I think not.

Q. Well, was all of this \$50,000 covered in the bill rendered by the Brooklyn Heights? Well, I should say as to that that the Brooklyn Heights in this case, as in very many other cases, merely acted as the agent for other companies in the system. They have one accounting office, and the collections are distributed to the other companies in their proportion.

Q. So that the Brooklyn Heights Railroad Company is the clearing house on expenditures of the various B. R. T. departments and the allies of the B. R. T. A. Well, I couldn't say that absolutely. I would say that in a great many cases the Brooklyn Heights acts in that way.

Q. Well, in this particular matter you know that as a fact, don't you? A. I do not.

Q. Was it any part of your duties to know that in connection with this determination? A. I don't think that was necessary.

Q. You are familiar with the requirements of the contract, are you not? A. Yes, sir.

Q. You know that it calls for vouchers, original evidences of indebtedness? A. And our counsel has always advised us that that does not have reference to anything in the prior determination, as to which matters have already passed through.

Q. That is, that that section of the contract didn't apply to the items contained in the prior determination of expenditures made before March 19, 1913? A. Yes, sir, so far as the section which deals with the rules for making the determination of cost including the filing of original evidences of expenditures.

Q. That only applied according to the interpretation of your

counsel to expenditures made in and about construction and equipment? A. All expenditures after March 19, 1913.

Q. Is there anywhere in the contract that that distinction appears? A. I think that that has to be inferred.

Q. Will you please find that, Mr. Harkness? A. (By Dr. Weber.) That has to be inferred from the provisions of the contract. It is probably impossible to apply the rules of procedure that are provided for in the contract before passing upon expenditures that had been made before the contract was signed.

Q. Well, you say it would be impossible for the companies to produce original evidences of payment? A. Not that alone.

Q. That isn't inconsistent or impracticable with the terms and requirements of the contract, is it? A. Not as the original evidence of the payments.

Q. Well, do you mean to say that your counsel has advised that you need not require original evidences of payment, at least prior to the determination of expenses? A. So I understand.

Mr. Harkness.— Here it is; articles 26 of contract No. 4.

Mr. Shuster.— This article 26 has been read into evidence several times, but the Committee seems to differ so much with the Commission's interpretation of it that I think I will read it in again. I am now reading from contract No. 4, which is the subway contract between the City and the New York Municipal Railway Company Corporation: "No payment, credit or compensation, or concession of whatsoever character, having in any way to do with the cost of construction, or the cost of equipment, shall be determined to be part of the cost of construction, or cost of equipment, unless the lessee, upon making such payment, credit compensation, or concession shall forthwith file with the Commission a duplicate voucher, credit slip or other original evidence thereof." Now, that seems to be very comprehensive in its terms that no payment, credit compensation, or concession of whatsoever character having in any way to do with the cost of construction or cost of equipment shall be determined to be a part of the cost of construction or of the cost of equipment without the filing of vouchers. A. I should say in the case of the New York Municipal that that was technically complied with.

Q. By submitting an omnibus bill receipted by the Brooklyn

Heights Railway or the Brooklyn Rapid Transit Company? A. I should hardly call it an omnibus bill. Take any other bill; take this bill, for example, of Parker, Hatch & Sheehan which was included in this \$100,000. Now, Parker, Hatch & Sheehan might have rendered a bill to cover services or any other corporation might have rendered a bill in the same way that the Brooklyn Heights Railway Company or the Brooklyn Rapid Transit Company could render a bill for the services of its officers.

Q. Well, but did they? Was the bill of the Brooklyn Rapid Transit Company one of the vouchers that was submitted by Parker, Hatch & Sheehan? A. That is just as good a voucher as any comptroller or auditor would ask in hundreds of cases.

Q. Well, now, isn't it a matter of fact that the New York Municipal Railway Corporation is nothing but an instrument of the Brooklyn Rapid Transit Company for carrying out the arrangements entered into by the Brooklyn Rapid Transit Company with the city? A. Practically, yes, but technically and legally, you have got two separate corporations.

Q. Well, is that any reason why you or the Chief Engineer should not have gone behind the returns, especially when you knew that this corporation was organized expressly to carry out the understanding between the Brooklyn Rapid Transit Company and the city? A. I think, Mr. Counsel, that we did go behind the returns. When the company claimed that it was entitled to some \$700,000 we cut that down to \$217,000.

Q. Now, we would be glad to have the statements or records upon which you acted in making any such reductions. I have asked for them before, but they have never been produced. A. I can give you a copy of the bill for \$322,000.

Q. Well, now, let's get up to this larger amount that you were asking credit for. We will be very glad to let you make a good showing here, if you can. A. I can't testify as to that on personal knowledge. I think other men, probably Mr. Harkness, can testify as to that.

Q. But why should the counsel of the Commission be fortified with a primary knowledge here in regard to the propriety and the righteousness of these expenditures? That's the duty of the engineer, not of the counsel. A. I can't answer that.

Q. Have you in your file any of the original documents submitted by the New York Municipal Railway Corporation, asking, or proposing, or claiming the right to allowances for \$7,000,000? A. No, sir.

Q. Do you know of any such statement or records in the files of the Commission? A. I do not.

Q. And where do you get the information that you have just given us with regard to that? A. That's my memory in part and from what I have been told by other members of the staff who were in these conferences.

Q. By the engineer or by Mr. Turner? A. I can't say. Probably Mr. Harkness has a more definite recollection as to those matters than I have.

Q. So far as you know, the only thing that you cut out was the advertising, the publicity expenditures, is that true? That amounted to \$101,000? A. I am not sure that I could claim all the credit for that.

Q. Well, who did cut it out, if you didn't? A. I argued against it; I know that much.

Senator Thompson.—What is your position with the Public Service Commission? A. Chief Statistician.

Q. (By Mr. Shuster) Well, now, in this administrative salary matter, what evidence did you have before you besides this bill of the Brooklyn Rapid Heights Railway Company? A. Shouldn't want any other.

Q. You were satisfied that the Brooklyn Heights Railway Company had paid in behalf of the New York Municipal Railway Corporation during those two years \$50,000 to T. S. Williams? A. The Brooklyn Heights either for itself, or as agent of other companies, yes, sir.

Q. Do you know for how many years prior to 1911 Mr. Williams received \$100,000 salary from all his companies? A. \$50,000

Q. \$50,000? A. No, I do not.

Q. Well, do you know whether or not he received as much as \$50,000 prior to 1911 in any one year for salary? A. I am certain that that was looked into at the time, yes.

Q. Do you think he did? A. Yes.

Q. His salary was not increased ; he didn't cost the company any more by reason of his services rendered in connection with these negotiations, did he, than if there had been no negotiations? A. No, but the stockholders were paying his salary.

Q. And charging it to the city under these contracts? A. Well, not charging it to the city exactly.

Q. Well, this is all charged and allowed toward the contributions of the New York Municipal Railway under contract No. 4? A. That includes the contribution toward the city-owned lines and also the cost of their own additions and extensions.

Q. And they are entitled to interest on this as much as on any other item? A. Oh, yes.

Q. Well, what we would like to be enlightened on, Dr. Weber, is what, if any, other original evidence you had that these were proper items chargeable under the contract? A. We did not obtain or preserve in our files the vouchers ; they were simply inspected. There is the first bill of \$102,000. (Bill handed to Mr. Shuster).

Q. The blue-penciling on this memorandum, was that done by you, Dr. Weber? A. That's my blue-penciling, yes, sir.

Q. Now, this bill was submitted by the Brooklyn Rapid Transit Company to the New York Municipal Railway Corporation under date of March 19, 1913, and there is quite a considerable difference between this bill and the bill as rendered and finally allowed, is there not? A. There is a difference of something more than \$100,000.

Q. There was always a shifting of the items, was there not? A. No ; reclassification.

Q. Are there any other documents you have in connection with this statement that you care to submit to us? A. This was a supplement. This is a copy of another bill submitted as supplementary to that, a sub-voucher.

Q. What is that? Is it in addition? A. Well, it is included in here.

Q. I will read it into the evidence, Mr. Chairman.

" 85 Pine Street,

" Brooklyn, N. Y.

" Mar. 19, 1913.

" New York Municipal Railway Corporation,

" Brooklyn Rapid Transit Company, Dr.

" Comptroller's Bill . . . . .

" Mo.— March, 1913.

"For various expenditures between February, 1911, and March 1, 1913, in and about Rapid Transit matters culminating in the contracts of March 19, 1913, between the City of New York by the Public Service Commission for the first district and New York Municipal Railway Corporation, said expenditures being represented by vouchers submitted for inspection and examination, and covering preliminary developments, engineering, legal and administrative services and disbursements, organization of New York Municipal Corporation, printing, advertising, engraving, certification of securities, etc., etc., but excluding interest on moneys provided.

1. To organization of New York Municipal Railway Corporation . . . . .	\$1,203.80
2. Printing, engraving, certifying securities . . . . .	28,100.00
3. Engineering . . . . .	66,107.86
4. Legal expenses paid directly by this company . . . . .	7,027.14
5. Legal expenses paid by the B. H. R. D. & Company . . . . .	40,000.00
6. Advertising, stationery, printing, miscellaneous services, traveling expenses, stenographic services, maps, etc., paid directly by this company . . . . .	120,212.03
7. Adm. expenses paid by the Brk. Hts. Ry. Co. . . . .	60,000.00
Total . . . . .	<hr/> \$322,650.83"

This exhibit has had the word "various" erased with blue pencil in the first line of the body. and then over it in pencil is the word. "replacements." The word "development" is blue-penciled and all of the items, 1, 2, 3, 4, 5, 6 and 7 are likewise blue-penciled.

(Statement of March 13, 1913, a supplement to the one previously read. entered into evidence as Exhibit No. 4.)

Now, Dr. Weber, from an accounting and a statistical point of view, and with your knowledge of the contracts, could you deem each and every one of those items proper? A. I think not. But I do, interpreting broadly the definition of the preliminary expenses on the contracts.

Q. So that you consider all of these items as fairly within the contract? A. Yes, sir.

Senator Thompson.—I meant to put into the record another thing in relation to this matter that came before the committee in regard to the tapping of wires some time ago. I don't believe I would misconstrue very much in reference to it from any quarter, but so as to be sure of it, the question that came before the Committee as brought before us by the Mayor was a question of his reading into the record certain conversations that he claimed were taken over the telephone by "listening in." Now, it has been thought that when the statement was made by the Chair here, that these people, hadn't had an opportunity to be heard before, words to that effect, that it might be considered a criticism by Mr. Strong, the Commissioner who was carrying on the investigation, under the moral act.

Now, the only thing that is before this Committee is the question that arose from the reading of the conversations by the Mayor and the people who followed in relation to those conversations. It happened that Commissioner Strong when the same matter was before him refused to hear this testimony because it wasn't legal testimony and under the circumstances couldn't have been heard by court, and he refused to hear the subject. Consequently they couldn't be heard, because Mr. Strong, very justly and legally ruled it out, and our Committee tried to rule that way. I think that so far as we are concerned that we were not within our jurisdiction when we went into that, but we did, and it is done. So I want to make it emphatic that no possible criticism could have been intended or could have been incurred for Commissioner Strong. *He couldn't have heard it.* He couldn't have heard it either one way or the other, because he refused to hear the subject. Everybody knows all about this thing. It is all done. So much for that.

Tomorrow we will pursue this matter, and Dr. Weber will come, and, as I understand through Mr. Harkness, the other officers of

the Public Service Commission that are here intend to work tomorrow. We will suspend until tomorrow morning at eleven o'clock.

(Adjournment.)

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### JUNE 7, 1916.

Meeting called to order at 11:00 o'clock. Senator Thompson presiding.

Testimony of DR. A. F. WEBBER:

Examination by Mr. Shuster:

Q. The statement contained in bills aggregating two hundred and seventeen thousand dollars is set forth in the table on Page 44 of the prior determination? A. Yes, sir.

Q. Now, did I understand you correctly to state that that bill as originally rendered was rendered against the Municipal Railway Corporation by the Brooklyn Heights Railroad Company? I think your memoranda called for two hundred and some odd thousand dollars? A. To the Brooklyn Rapid Transit Company, but that included the sub-vouchers from the Brooklyn Heights Company for one hundred thousand dollars for legal services and administrative expenses.

Q. Yes. Now how could you ascertain that President Williams devoted one-half of his time and services to the negotiations and consultations of contract No. 4? What data did you have upon that subject? A. I was sufficiently familiar with those negotiations myself.

Senator Thompson.—The question is, did you have any data on the subject? A. I had no specific data.

Q. Then all you relied upon was your knowledge of the negotiations that from time to time resulted in the contract? A. Yes.

Q. Did you go into the books and records of the accounts of either the Brooklyn Heights Line or the Brooklyn Rapid Transit Company or different other corporations connected with the Brooklyn Rapid Transit Company to determine or ascertain if possible



whether these payments actually will be paid and have any of them actually been made prior to the signing of the contract and actually made on behalf of the contractor, the New York Municipal Railway Company? A. The only inquiry made by our accountants was as to the actual salary paid to Mr. Williams. The distribution of that salary among the various operating companies didn't seem to me to be important and if the Brooklyn Heights Railway Company for example, acted as agents of the other Company, it would seem to me that that was satisfactory. Later, the amounts, this fifty thousand dollars was reimbursed in various operating companies and came through in their reports to us showing in each case what each company had received.

Q. Upon what evidence did you satisfy yourself that you that he was receiving that amount of salary during those two years? A. Why, very largely, we accepted the statements of the officers of the company.

Senator Thompson.—The oral statements? A. Yes.

Senator Thompson.—No record made of them? A. Personally I can't say there was a record kept of those.

Senator Thompson.—No record that you know anything about? A. There was a set of records filed with the Chief Engineer about this time as to the salaries paid to various officers.

Mr. Shuster.—By which company? A. The entire amount of compensation.

Q. The right of the company to have allowed any of their expenditures prior to the making of the contract is contained in the definition of costs in the contract is it not, Dr. Webber? A. Yes.

Q. And that is subdivision four of Chapter one, less expenses of superintendence and less allowances for instance on page 8 of the contract. Do you understand that the Brooklyn Rapid Transit Company singly pays to its President fifty thousand dollars a year and did during the years 1911 and 1912 and up to March 19, 1913? A. No, I think the Brooklyn Rapid Transit Company itself directly paid a very small amount of this salary. Practically the entire salary is charged in the accounts of the operating companies.

Q. Well, were all of these allied companies of the Brooklyn Rapid Transit Company interested in these negotiations, this contract made with the New York Municipal? A. They were not interested but they furnished the services of their officers.

Q. As a matter of fact, Dr. Webber, were you instructed by either the Engineer or the Commission to make an investigation in regard to these items beyond the checking of the fact they had actually been paid? A. There were no written instructions and my best recollection is that several conferences were held with representatives of the company in some of which members of the Commission took part and finally at the end of one of these conferences, a statement carrying charges of three hundred and twenty-two thousand dollars in round numbers, was handed to me with the understanding that I should check up the vouchers showing the original payments. The bill itself constituted a voucher in the sense of a contract and the contention had been made that that voucher alone satisfied all requirements, but we took the position that we wanted to see all the records as to original payments.

Q. Did you see these records? A. Except of course, as to the salaries of the officers of the companies.

Q. Of which there would be no vouchers, is that the reason, outside of the bookkeeping charges? A. There would be vouchers, but it didn't seem necessary to make an examination of vouchers of seven or eight different companies on points that we had assurances from various officials of the companies as to the amounts and as to which they were filing definite information for the purpose of later determination.

Q. Well, you made no investigation as to whether they might have been mistaken in their figures? A. No.

Q. Leaving out the question of good faith, you assumed that their figures were accurate as well as proper? A. Yes.

Q. Well now, suppose that the New York Municipal Corporation had carried through all these negotiations instead of the Brooklyn Rapid Transit and then had entered into this contract, would you have considered the requirement of the contract satisfied as far as the Chief Engineer was concerned by their mere statement that they had spent that much money or would you insist on seeing the receipts and vouchers of the New York Municipal

Corporation? A. Well, the vouchers would in that case have been in nowise different from these vouchers right here.

Q. Won't they? A. They would have been bills for services from the people who had rendered the services.

Q. And you would have insisted on going into those bills under the interpretation of the contract? A. The question of reasonableness would have entered into that.

Q. And as to whether they were actual and necessary expenditures. They would have gone into that, would they not? A. Yes.

Q. Now, why didn't you do those things in many instances, why didn't you go into the B. R. T. books and the Brooklyn Heights books and these others to ascertain whether they were actually and necessarily expenses and had been paid for in behalf of the New York Municipal? A. Well the only question was had the services been rendered and whether these bills were reasonable.

Q. And you determined that they were reasonable and the bills had been rendered? A. Yes.

Q. And did you consider that a performance of the duty imposed on the Chief Engineer by the contract? A. I will answer that question if you will allow me to make some explanations.

Q. Certainly, if they are not too long. A. The question of distributing the salary, the compensation paid to the officers of the company, between the construction account and operating account, has been an unsettled question. The practice until recent years in nearly all companies was to charge the entire salary to operation unless there was a very considerable amount of time that should be actually recorded as being devoted to constructive work. That practice has been changing as a result of a large part of municipal regulation and in decisions in rate cases by the courts.

The system of accounts that has been adopted by the Utilities Commission, the Interstate Commerce and the State made such radical changes in the method of keeping construction accounts, in that they required all property that is worn out or retired from service to be deducted from the capital account, that that method had not been generally in force among the Utilities.

Proceeding with that idea of making the construction account more actually represent the actual cost, there has been a tendency to require time records on the part of officers who give some of their time to construction and some to operation so that there shall

be charged to construction a part of the compensation. The courts in numerous cases have taken this position that a utility must be allowed a fair return upon the value of its profit.

Now, that value may have been built up not by outside contract, but by the corporation itself, all the work of supervision being done by the salaried officers of the company and their salaries would have been charged into operation. But under the courts' ruling, those companies are entitled to include it in investment or the value of the profit, the necessary cost of supervision, so that if you leave it an operating expense the entire amount of supervision, the company would get a double return, that is, part of the salaries or compensation, representing their compensation for services given to construction would appear in operating expense and also appear in construction.

That process has necessitated some revision in our policy toward charging to construction a part of the compensation paid to corporation officials. While originally, I should have been against including any of this compensation in the construction account, in view of the developments of the last four or five years as I have outlined, it seems to me a reasonable method of handling it. If the matter had gone to arbitration, I think the arbitrators would have decided in its favor, that the company is entitled to include in the cost of construction a reasonable amount for the services of the officers, rendered by the officers in connection with the formulation of the contract which leads up to construction.

Q. You think that rule would necessarily apply in view of the language of the contract? A. In view of the language of the contract.

Q. Now, let us see. We will read in the evidence from page 8, of contract No. 4, subdivision 5 of sub-section 14, entitled, Lessees' expenses for Superintendence, etc."

"Actual and necessary net cost in money to the Lessee for Superintendence, Insurance, Damages, Administration, Engineering and Legal Expenses in and about construction including the cost of construction for initial operation, the expenses above referred to in this paragraph, actual and necessary expense incurred or payable by the Lessee in and about construction, prior to the day of this contract and in addition

the actual and necessary expense incurred or payable by the Lessee in printing, engraving and certifying securities, to the construction and actual and necessary expense in organizing the Lessee."

Now, the only word in that entire paragraph under which you could let in executive salaries or administrative salaries or any part thereof, is the word "Superintendence." A. "Administration," also.

Q. "Administration," I stand corrected. Now this "Superintendence" and this "Administration," must be in and about construction as it is defined in the contract, the same as what shall constitute these expenditures allowed. Now what was there necessary either in the "Administration" or the "Superintendence" in connection with the negotiations in making this contract, what part of his services as President of the Company, taking it as an illustration, did Mr. Williams give in the way of superintending or administering these negotiations that the Company could probably consider as being done in connection with or about the construction of the railroads provided for in the contract? A. No construction could be undertaken and no real estate, which is also included in construction in our definition, could be acquired or any steps taken starting this enterprise, until on the one hand engineers had prepared plans and until on the other hand —

Q. Now, I am talking about confining my question to the activities of Mr. Williams as President of the Company. A. I was about to add that the services of Mr. Williams seemed to me just as essential to undertaking construction, building of the railroad, as the plans for it drawn up by the engineers as to which there could be no question. You have to have the contract in the first place, that is a requisite to beginning construction.

Q. Well, Dr. Webber, you are aware I take it that the Company compensated Mr. Williams by special salary for the services which he rendered in connection with these negotiations for the contract, did it not? A. I have no personal knowledge of that, but I understand that they did. You mean a special extra compensation?

Q. An extra compensation allowed for his services as President in connection with it. A. I understand. He so testified.

Q. That might seem to indicate that the Company hadn't expected to be allowed anything for the services that he rendered as President and for which they paid him additional salary, might it not? A. Why it seems to me that the directors of the Company might very well make a plan without extra compensation to any man in their service who had devoted a great deal of time to some especially large and important work.

Q. When they did that wouldn't they charge that special salary against that specific work or service covered in that specific service? A. Yes, that might be done.

Q. That would be the usual and customary way of handling that, wouldn't it? A. Yes.

Q. So that it is possible that this fifty thousand dollars that was allowed in this determination for Mr. Williams' salary together with the allowance to Mr. Bullock of seven thousand five hundred and thirty-one dollars and the ten thousand to the other officers; was a proportion of that special compensation instead of the salaries, the proportion of salaries actually paid during 1911 up to March 13. A. I don't understand that there was any extra compensation in the case of Mr. Bullock.

Q. Well, let's eliminate all but Mr. Williams then. It is a fair inference that instead of your having actually allowed them for their salaries that they paid and would have paid if there had been no contract, but as a matter of fact their claim covers the so-called bonus or special compensation? A. I shouldn't draw that inference. I don't think there is any relationship there at all. The whole theory of cost accounting as it is now applied is that a salary paid to an employee or officer of the company who is engaged on both construction work and operation, shall be apportioned between the construction account and the operating account. At a time subsequent to the closing of the books for some fiscal period that has been decided, that would have been pro rated at the time the pay rolls were made up, charges entered on the books. To have charged to construction account a part of the salary paid him, then when the amount is drawn out of construction funds, a reimbursement of the income account is made of that portion of the salary that is transferred from income to construction and if in addition the company decides to give a special fee or honorary.

that represents an appropriation of profits exactly in the same way as an appropriation for dividends.

Q. From any investigation you may have made, how can you be certain that that fifty thousand dollars is not some part or proportion of the so-called honorary compensation? Have you any thing before you to dispute that fact or had you at the time this allowance was approved by the engineer? A. There is no relationship at all, Mr. Shuster.

Q. What makes you say that? A. Because when the company reimburses its income account of construction funds, that money becomes available for dividends or for any other purpose within the discretion of the board of directors.

Q. Well now as a matter of fact, this B. R. T. organization would have paid the same salaries and had the same expenditures so far as administrative salaries allowed are concerned if there had been no negotiations whatsoever, is not that a fact? A. No, I wouldn't say that absolutely because take the case of —

Senator Thompson.— Well they are not administrative salaries. A. The presumption would be that considering the time that they gave to it.

Q. But why do you shift away from Mr. Williams? That is what I am talking about. A. In Mr. Williams' case he was receiving fifty thousand dollars a year from his companies for all of this period and prior to that.

Q. Had there been no negotiations whatsoever, he would have still received the fifty thousand dollars a year? A. That is true but the fact that he gave some of his time to this matter necessitated additional men in the employment.

Q. The company recognized that fact and gave him an honorary or a special compensation, didn't it? A. So I understand.

Q. Therefore that logically, if a proper expenditure, was the actual expenditure that the company made for those services he rendered in connection with these contracts, is it not? A. That would be the company's estimate of the services.

Q. Isn't that the logic of the situation? A. I understand that that estimate was one hundred thousand dollars, while it is only fifty thousand dollars a year here.

Q. But that is the proportion that was allowed. They didn't ask you to give it all to them. They only asked you to reimburse them for fifty thousand dollars of that special compensation. What

I want to know is you say this had no relation to that special compensation or bonus. I want to know how you know it hasn't. Clearly nothing you showed us here yesterday showed us that you had any knowledge whatsoever except the mere statement that these are the proportion of the salaries and that they felt that they were entitled to have it allowed. Now, it might have been a special salary. What evidence did you have before you that this fifty thousand dollars was not all of it, a special compensation? A. Why, I can't see that we are concerned at all as to what the B. R. T. does with fifty thousand dollars that comes back to them to reimburse their income account. If they want to pay that out to Mr. Williams, they can do it. Or, as Mr. McAneny once said, "They can buy peanuts with it."

Q. The language of your contract which Mr. McAneny and the others are responsible for says that the company is entitled to its actual and necessary net cost in money to the Lessee for Superintendence and Administration. And those same items actually and necessarily incurred are payable by the Lessee in and about construction made prior to the signing of the contract. That was their agreement. It must be actual and necessary to that service. There is no escape from that is there? A. No.

Q. Now you must concede that that fifty thousand dollars a year paid to Mr. Williams was a salary that he would have been paid if he hadn't given any services whatsoever in connection with these contracts. Now when the company gives him special compensation and particularly for those things, isn't it the inference at least that they are asking the city to reimburse them for at least fifty thousand dollars of that special compensation? A. No, I can't agree with that.

Q. I think it speaks for itself. Now, turning to the next item and the only other item allowed to the Lessee, we have it in an allowance which is set forth on page 46 of the prior determination. I will read the evidence into the record on that matter. Taken from page 46 of the prior determination for the New York Municipal Railroad, under date of November 24, 1911.

"All the expenditures to Lessees contributing to cost of construction, Item 7, and to cost of equipment, Item 6, in this determination are represented by a bill presented to the New York Municipal Railway Corporation as follows:"



That means that it was presented by the New York Municipal Railway Corporation to the Engineer? A. Yes.

" 85 Clinton St.

" Brooklyn, N. Y., March 19, 1913.

" New York Municipal Railway Corporation to Brooklyn Rapid Transit Company, Dr. Controller's bill, month of March, 1913.

6% interest paid on \$40,000,000.00 par value, six years, 5% notes sold for your account pursuant to agree- ment of October 1, 1912, to equal 6% per annum basis.....	\$2,400,000.00
Discount . . . . .	409,200.00
<hr/>	
Net interest payment by Brooklyn Rapid Transit Co. (purporting to be for the New York Municipal Railway Corporation) . . . . .	\$1,990,800.00
Interest paid on \$40,000,000.00 par value notes, October 1, 1912, to December 31, 1912.....	500,000.00
Less 3% on balance.....	287,380.80
<hr/>	
	\$212,619.20
Interest accrued on \$40,000,000.00 par value notes, January 1, 1913, to March 19, 1913.....	433,333.33
Less 3% on balance.....	241,253.73
<hr/>	
	\$192,079.60
Interest on \$212,619.20, advanced December 31, 1913, to pay Janu- ary 1, 1913, interest on notes to March 19, 1913.....	2,799.49
<hr/>	
Total amount allowed as interest as charged against the New York Municipal Railway Corporation by the Brooklyn Rapid Transit Company in the prior determina- tion under Contract No. 4.....	\$2,398,298.29

Mr. Shuster.—Was this bill submitted to the Engineer of the Commission by the New York Municipal Railway Corporation? Do you know? A. I do not know.

Q. Well, I will show the record of the Engineer's office and there appears to be a certified resolution passed by the Commission in regard to this bill under date of June 30, 1913. After setting forth in the whereases, the bill or statment that I have just read, the Commission resolved as follows:

Before reading the resolution, I will read an additional whereas, following the incorporation of the statement with regard to interest charged by the Brooklyn Rapid Transit Company against the New York Municipal Company.

Whereas, under date of June 30, 1913, the New York Municipal Railway Corporation has addressed a letter to the Commission as follows:

“In view of the proposed determination by the Chief Engineer of the Public Service Commission as part of the cost of construction and equipment, paid or secured prior to the date of the contract of March 19, 1913, of interest paid or accrued on moneys divided by the Lessee or on its behalf, said interest amounting to two million, three hundred and ninety-eight thousand, two hundred and ninety-eight dollars and twenty-nine cents, after deducting interest received by the Lessee or on its behalf, and in view of the fact that the item thus proved includes interest prepaid to the extent of one per cent. of forty million dollars for six years, ending July 1, 1918, although during said period, part or all of the property paid for by the moneys so provided may be placed in operation and upon the cost thereof the Lessee will be entitled to deduct from the revenue of the railroad, six per cent. per annum, if earned.

“We hereby agree to credit to the cost of such property so placed in operation, interest upon such cost at the rate of one per cent. per annum from the time that such property is placed in operation until July 1, 1918. This shall apply to the respective parts of the railroad or existing railroads as

the same are placed in operation from time to time to July 1, 1918.

“ Very truly yours,  
“ The New York Municipal Railway Corporation.  
“ (Signed) T. S. WILLIAMS.”

This bill was before the Commission and was acted upon by them under date of June 30, 1913, in the following resolution:

“ Resolved: That the said item of two million three hundred and ninety-eight thousand, two hundred and ninety-eight dollars and twenty-nine cents, being the amount incurred by the Brooklyn Rapid Transit Company in behalf of the New York Municipal Railway Corporation, as set forth in the above bill, and it is hereby deemed to be interest actually and necessarily paid or accrued on moneys paid by the New York Municipal Railway Corporation or on its behalf from time to time prior to March 19, 1913, within the term “ Interest ” as the same is defined in subdivision 7 of paragraph 14 and subdivision 6 of paragraph 15 of the contract between the City of New York by the Public Service Commission for the First District with the New York Municipal Railway Corporation, upon the express stipulation and condition that there shall be deducted from the cost of construction and from the cost of equipment an amount equal to one per cent. per annum, payable semi-annually upon the cost of such construction and equipment, computed from the date when said construction or equipment is placed in operation to July 1, 1918.

That resolution is certified to by the acting Secretary, James B. Walker.

Senator Thompson.— There is a thing that I had in mind before I went out that I would like to put on this record. Now, these contracts with reference to these determinations are all substantially alike I take it, that is, contracts 3 and 4 are substantially alike.

Mr. Shuster.— Contract 3 doesn't provide anything in regard to the interest but on the question of Lessees' superintendents, they are identical as I recall it.

Senator Thompson.— The determination provided for in the contract, Article 29, provides that the Engineers shall determine

the cost of construction and the cost of equipment and they shall do it within six months after the contract is signed in respect to all cost of construction or cost of equipment paid or accrued for the part of the date of the contract. That is what they mean by Prior Determination.

Now, the only authority under which he charges prior costs of construction is contained in the definition of the words, "cost of construction and cost of equipment." But that is provided for in subdivision 14 of paragraph 7, continuing on page 8, and comes under subdivision 5 which says: "The actual and necessary net cost in money to the Lessee for Superintendence, Insurance, Damages, Administration, Engineering and Legal expenses in and about construction."

Now, it is absolutely limited to what has been spent prior to the date of the contract in and about construction alone. The word "construction" is defined in the contract on page 6, to mean all work of constructing the railroad, including the doing of the work, the providing of the materials, the restoration and reconstruction of street surface and sub-surface interfered with during the building of the railroad. All the work to be done and materials to be furnished of whatever nature necessary to the completion of the railroad structure.

All tracks, together with all real estate and interests therein necessary to be acquired for the purpose of construction and operation of the railroad.

Now that absolutely will not admit of any charge for the exertions, the expenses or the time of officers of the railroad in attempting to procure the execution of the dual subway contract. It can't possibly be read into this contract nor can it possibly be read into these definitions.

Mr. Shuster.—Now on these interest items and following out the thought of the Chairman as just read into the record, I will direct the witness' attention to page 8 of the contract under subsection 7, in relation to interest and I will read that in the evidence.

"Interest actually and necessarily paid or accrued on moneys provided by the city or by the Lessee or on its behalf from time to time, for the items of this definition, from the

respective times of providing said moneys but not including interest on any moneys provided by the Lessee or on its behalf prior to October 1, 1912, to the beginning of operation of the part of the railroad for which such moneys were provided, less any interest received by the city or by the Lessee or on its behalf on such moneys."

Now, Dr. Webber, the first item of the interest bill. Can you explain what that item actually covers? A. That covers the amount of money paid by the Brooklyn Rapid Transit Company on the sale of forty million dollars of its six year notes with the proceeds of which it bought forty million dollars of New York Municipal Railway bonds.

Q. Do you know as a matter of fact whether the bonds of the New York Municipal Railway so acquired by the Brooklyn Rapid Transit Company constitutes the principal security for the payment of the forty million of notes issued by the Brooklyn Rapid Transit Company on July 1, 1912? A. Yes, it does constitute the principal part of the security. The additional security is ten million dollars of the Brooklyn Rapid Transit bonds, a guaranty by the New York Consolidated Railroad Company of the New York Municipal bonds and also a guaranty by the Brooklyn Rapid Transit Company.

Q. These notes of the Brooklyn Rapid Transit Company were five per cent. notes were they not? A. Yes.

Q. And the banks in taking those notes took them at a discount did they not? A. Yes.

Q. Do you recall what the rate of discount was? A. It was approximately five per cent., very slightly less than five per cent. The discount being as much as would put the notes upon a six per cent. basis, six per cent. yield.

Q. That meant a one per cent. discount, did it not? A. It amounts to the same as a one per cent. discount.

Q. It amounts to changing the interest charge from five per cent. to six per cent., but it is one way of getting around calling discount by its right name is it not?

Senator Thompson.—When somebody gets six per cent. and then only pays five.

Mr. Shuster.— They agreed to pay five per cent., but they actually paid six, that is what it is.

Senator Thompson.— Somebody gets one per cent.? A. No, there is no profit there.

Senator Thompson.— Well now, let us see if we get this clear. The city pays that one per cent. doesn't it? A. That is the basis of the contract.

Senator Thompson.— I will have to ask you before you retire, do you know of a single feature, a single part of either contract three or contract four which provides for something for the benefit of the city alone, that was urged in that contract at the expense of the railroad? A. Senator, this is a pretty large question to discuss those contracts.

Senator Thompson.— I would like to find it. A. I think the justification would be that only through these contracts could the city obtain the railroads.

Senator Thompson.— They get the railroads, we understand that.

Mr. Moss.— I think the railroads get the city.

Senator Thompson.— The Committee will agree now that what the city gets is that there will be more railroads located in the city limits than there were before. I think we are safe on that.

Mr. Shuster.— Now, let us get it in as brief a form as we can, just what this transaction in plain parlance means. About July 1, 1912, when it looked as though the negotiations would be consummated in a contract, the Brooklyn Rapid Transit Company and its ally, the operating company, what do they call that, the Union Consolidated? A. The New York Consolidated Railroad.

Q. The New York Consolidated Railroad Company, having borrowed heavily on its operations, concluded to create a new corporation known as the New York Municipal Railway Corporation. The Brooklyn Rapid Transit Company agreed to finance the contract No. 4, for this new railroad company, the New York Municipal. They issued forty millions of dollars in notes, six-year

notes, bearing five per cent. interest, secured by a mortgage upon its property, the banks agreed to buy those notes carrying five per cent. interest on a six-year basis, with a discount of, five per cent. did you say? A. It is approximately five per cent.

Q. So that they bought the bonds for ninety-five approximately, carrying five per cent. interest, but a side agreement changes the rate of interest for a six-year period to six per cent. That cost the Brooklyn Rapid Transit Company one million, nine hundred and ninety thousand, eight hundred dollars. With the proceeds of that sale of notes by the Brooklyn Rapid Transit Company, made about the first of July, 1912, and before the New York Municipal Railway Corporation was even in existence, they took the proceeds of those notes and acquired forty million dollars worth of bonds issued by the new company, the New York Municipal under a mortgage authorized and approved by the Public Service Commission on such property as that new corporation then had or might thereafter acquire, chiefly, this contract, lease No. 4, had with the city. And in these transactions, the New York Municipal agrees to pay that additional over and above its five per cent. Now, is that substantially the situation? A. Yes, it is.

Q. Now, it is a fact is it not, Doctor. that under the contract neither the Interborough or the Brooklyn Rapid Transit Company could be allowed a discount on the sale of their bonds to exceed three per cent.? A. That is correct.

Q. It is also a fact that the Brooklyn Rapid Transit Company acquired the bonds of the New York Municipal Railway Company at a discount of three per cent., or at ninety-seven? A. Yes.

Q. So that in order to get an allowance for this additional one per cent., which the banks charged for the loaning of the money to the Brooklyn Rapid Transit Company, which it in turn loaned to the New York Municipal Railway, they had to call it interest, otherwise it couldn't be allowed. A. Yes, unquestionably.

Q. What do you say, Doctor, from the point of view of correct accountancy and finance, as to whether or not that one per cent. was actually interest or a discount, so far as the New York Municipal Railway Corporation is concerned? A. Technically, there can be no question that that is a discount rather than interest, but the question that was presented to the Commission was whether it would not be more advantageous to the city as well as to the com-

pany to take in this discount or prepaid interest in the prior determination at a smaller amount than it would be to take it in during the construction period at a larger amount as was done in the case of the Interborough.

Q. You say technically it was a discount and not interest? A. Well, it was a discount as far as the Brooklyn Rapid Transit Company was concerned. The New York Municipal was bound by its contract with the Brooklyn Rapid Transit Company to pay interest upon all obligations used to finance the New York Municipal, so that they would have to pay interest on the B. R. T. notes and they would also have had to pay interest upon additional obligations of the B. R. T. with which the B. R. T. could buy the New York Municipal bonds, because it would not receive a sufficient amount of cash from the sale of its notes to buy those bonds. The New York Municipal would therefore have been obligated to pay some additional interest.

Q. Didn't the New York Municipal sell its bonds for ninety-seven? A. Yes, but the contract, No. 4, provides that the interest be charged to cost as money provided by the Lessee or on its behalf, so that virtually the Brooklyn Rapid Transit Company is the agent of the New York Municipal in financing the contract.

Q. But the Brooklyn Rapid Transit Company was the creator of the New York Municipal Railway was it not? A. Just the reverse.

Q. The New York Municipal Railway was the creator of the Brooklyn Rapid Transit Company, I should say. I thought I had said that. And in practical effect, the Brooklyn Rapid Transit Company was dealing with itself when it dealt with the New York Municipal Railway was it not? A. Certainly the real parties of interest here are the stockholders in the main of the Brooklyn Rapid Transit Company. That is subject only to modification that there are some outside stockholders of the New York Consolidated Railroad.

Q. But of small consequence? A. Less than five per cent.

Q. And as a matter of fact the New York Municipal was carrying on the contract made by the Brooklyn Rapid Transit Company with the city? A. Yes.

Q. So that it simply amounts to this that the Brooklyn Rapid Transit Company borrowed forty million dollars on its notes and



then subsequently by a legal finance bought the bonds with that same money of itself at a discount of six per cent. which the contract allowed. But in doing that in that transaction they pay one per cent. more during the period of six years than the Brooklyn Rapid Transit alone is to run by the agreement in the notes called for. Now, this matter was discussed more or less among the various officials and subordinates of the Public Service Commission having to do with the determination was it not? A. Yes.

Q. Did you ever see the memorandum for the Chief Engineer prepared by Mr. Harkness in relation to this very matter? A. Of what date is that?

Q. Under date of July 9, 1913. A. Yes.

Q. I will read that memorandum. A. That was made after this resolution of the Commission?

Q. Yes. Memorandum for the Chief Engineer, July 9, 1913, by Mr. Harkness. (I am now reading from Public Service Commission file No. 14-56.)

I am in receipt of a copy of your letter of July 1, transmitting to the Commission copies of your two letters of June 30, to the New York Municipal Railway Corporation, relative to the income portion in the cost of construction or equipment of certain expenditures incurred prior to March 19, 1913.

On thinking the matter over, it has occurred to me that perhaps you should have in your files a resume of what I stated to you orally in regard to the interest allowance.

The contract of March 19, 1913, with the New York Municipal Railway Corporation provides for including in cost, interest paid or interest incurred by or on behalf of that corporation prior to the date of the contract. The contract also provides for including discount, but the discount allowance is restricted to three per cent. of cost. In financing the enterprise, the B. R. T. issued on account of the New York Municipal Railway Corporation, its notes bearing five per cent. but sold on a six-year basis. That is, the bankers deducted from the purchase price of the notes a prepaid amount equal to one per cent. during the life of the notes which was equivalent to selling them at about ninety-five and one-half.

It is the amount of this prepayment that the company wishes charged up to cost and it is this that is included in the Commission's resolution and in one of your letters of June 30.

As Mr. Turner urged in discussing the matter with you, pre-paid interest is nothing more or less than discount and the contract prohibits an allowance for discount in excess of three per cent. of cost. That is technically correct, but throughout the negotiations leading up to the signing of the contract we were rather thoroughly acquainted with the B. R. T. financial plan and knew that its engagement was to issue five per cent. notes on a six per cent. basis and that the company intended to charge up six per cent. interest during construction.

To this no objection was made by those acting for the city and in effect this arrangement is recognized in the contract since the amount to be deducted from the company's profits to reimburse cost because of the provision of the company's money so far in advance, was computed upon that basis. This was so thoroughly understood that an attempt to stand upon the literal text of the contract in opposition to the real understanding would, it seemed to me, constitute a breach of faith.

In the opposition made before the Commission to the company's request by Dr. Webber and myself, there was no suggestion that six per cent. interest should not be allowed.

Q. Was there any suggestion that it should be allowed on the part of you or Mr. Harkness before the Commission? A. I had to assume that the contract implicitly recognized six per cent. as the rate properly charged for the construction.

Q. But further than that the Commission had already tied your hands by a resolution of June 30, in approving these various items and this particular discount of one per cent., had it not? A. Well, of course all this took place before that was passed. In fact, that wouldn't have been passed at all but for the prior determination.

Q. But this very question as to this being technically a discount was laid before the Commission at the time they resolved to allow the B. R. T. to have that additional discount. A. Yes.

Q. And the Commission was fully cognizant of that situation? A. Certainly.

Mr. Shuster.—All right, I will continue the reading of the memorandum.

We opposed charging all the prepayment up at once because of

complications bound to arise when parts of the lines are put in operation and recommended that the additional one per cent. should be charged off in semi-annual installments. In other words we proposed going through the form in the substance and treating the notes as six per cent. notes instead of five per cent. notes and charging up interest during construction, semi-annually at six per cent.

The plan adopted does not differ from this in principle, but is objectionable because of the difficulties it will make in separating construction and equipment accounts from operating accounts.

Q. In other words you were going to feed it to the city piecemeal, is that what he means, so it wouldn't hurt so much? A. Not altogether that, but it would be simpler accounting and because then we wouldn't be putting in the construction account some interest during the operating period.

Q. But it was bound to get in, the whole of it, at sometime, no matter which way you handled it, no matter whether in a gross sum or in small allotments. A. Yes. Assume that this contract No. 4, recognized that agreement, recognized the agreement between the New York Municipal Railway Corporation and the B. R. T.

Q. Doesn't that resolution change the terms of the contract in effect? A. No, I think not. I think it only makes a more definite understanding between the Commission and the company.

Q. Do you know whether the Board of Estimate and Apportionment or the Controller of the City of New York was informed as to this resolution before it was passed? A. No, I don't know as to that but the Controller and the Board of Estimate understood perfectly that the rate of interest during the construction period was to be six per cent. because that was the reason, the only reason, why the Interborough was allowed six per cent. in its contract.

Q. Do you mean to imply that this discount of one per cent. was any part of the cost of construction actually, was that interest during construction? Can you as an accountant and an expert statistician, by any possibility classify that as any part of interest during construction? A. I should have to say that interpreting that agreement between the New York Municipal Railway Corporation and the Brooklyn Rapid Transit Company for the sale of the Brooklyn Rapid Transit five per cent. notes, on a six per

cent. basis as being understood and embodied in this definition of interest in Contract No. 4.

Q. Will you keep in mind also the prohibition of the contract. It is against a discount of three per cent. The record is very keen on this transaction, Doctor, and I know your objections. A. Still, the question is this. Had the interests of the city suffered by including the present worth of this two million four hundred thousand dollars at one time rather than by taking it in piecemeal which they were undoubtedly entitled to do under the agreement between the company and the city, because Contract No. 3 specifically provided for interest during construction at the rate of six per cent. and that was done merely to place the Interborough on the same basis as the B. R. T. The Interborough bonds were five per cent. bonds and when they were allowed interest at six per cent., the only reason that I have ever heard from that was to give them the same advantage that the B. R. T. had. That is, the Commission and the city authorities had practically recognized that during the construction period the B. R. T. was to draw out of its construction funds at the rate of six per cent.

Q. Well, didn't the banks get this six per cent. or did they give back that one per cent. to the B. R. T.? A. That went to the bankers.

Q. Precisely. Then I can't see that there is any special advantage to the New York Municipal if they paid it out to get it back. A. If the company unquestionably would have been entitled to take out of construction funds and include in construction cost interest at the rate of six per cent. on the forty million dollars, now that means two million four hundred thousand dollars a year.

Q. Yes. A. Actually, they are now drawing down from construction only two million a year for interest. In other words they are drawing down four hundred thousand dollars a year less than they were entitled to and that is in the Interborough, you see. Now, over a six-year period that difference of four hundred thousand dollars a year makes a total difference of two million four hundred thousand dollars.

Q. That comes out of income, doesn't it? A. Yes.

Q. All this comes out of income and prior to paying interest on the city's bonds, is that a fact? A. You mean the company gets interest charges?

Q. Yes. A. That is true.

Q. And that is the extent of that depreciation charge if you want to call it, each year? A. No, it doesn't.

Q. But they are entitled to that additional one per cent. to take care of that. But that is aside from my question. A. I think I can make it plain in just a moment.

Q. You attempted then to correct something or to relieve the situation into which the Brooklyn Rapid Transit Company had placed itself, that is what it amounted to and the Commission by relieving that situation in its regulation of June 30, through your persuasion and Mr. Harkness', evidently endeavored in some way to get that back by an equal distribution, did you not? A. No, all that we wanted to get back was as much of the interest as has been paid upon the investment that has gone into operation. Just as soon as any part of the railroad goes into operation then the interest on that portion of the investment is chargeable in revenues and is not chargeable to construction.

Q. Yes. A. Now, our apprehension was that there would be charges in the construction of this interest over a six-year period down to July 1, 1918, whereas a considerable part of the railroad would be in operation before July 1, 1918, and the revenue should bear the interest burden rather than the construction.

Q. But that only is true as the railroads actually go into operation. A. Yes.

Q. And if the railroads haven't come into operation that doesn't amount to anything? A. No.

Q. It is a fact that you were all agreed that technically the company was not entitled to it. Mr. Turner was very much opposed to this method of allowing this one per cent. was he not? Did you ever see his memorandum to the Chief Engineer under date of July 2, 1913? A. I don't think I have ever seen it.

Q. Well, it is in the files of the Commission, being file No. 1456, and I will read it into the evidence.

"Memorandum for Mr. Craven, in re Mr. Harkness' memorandum of July 1, 1913, referring to the allowance of the so-called prepaid interest on contract No. 3, with the New York Municipal Railway Corporation."

(He evidently meant contract No. 4, because contract No. 3 was with the Interborough.)

" July 2, 1913, by Mr. Turner. Mr. Harkness in his memorandum refers to my urging that prepaid interest is nothing more or less than discount and that the contract prohibits an allowance for discount in excess of three per cent of cost.

" I only wish to say in reference to this matter, that I understood perfectly from Mr. Harkness' explanation to me that the conferees had full cognizance of the fact that the B. R. T. Company's financial plan included the use of five per cent. notes on a six per cent. basis and that the Company intended to charge up six per cent. interest during construction.

" Although this question was before the conferees and understood by them, as I understood the contract, and I believe Mr. Harkness agreed with me, the contract did not clearly provide for the payment of this prepaid interest which is in a sense a discount in excess of three per cent.

" My only purpose in objecting to the program which we followed was to make the records show a consistent disposal of the matter. You were not a party to the conferees. The instrument for your guidance in your determination was the contract and if the contract did not clearly stipulate that such prepaid interest was to be allowed, I thought it proper that you should make a determination which excluded it and permit the Company to appeal and thereby allow the matter to be decided upon its merits by the Commission with full knowledge of the facts. The records would then be perfectly straight and clear as far as you were concerned.

" My objection was not so much to the allowance of the prepaid interest as it was to the manner in which the determination was being made.

" (Signed) D. Turner.

" Deputy Engineer of Subway Construction. "

Mr. Shuster.— This was all written by Mr. Turner to the Chief Engineer warning him against this very transaction as being outside the terms of the contract. The real reason for this discount

and additional cost of one million, nine hundred and ninety thousand, eight hundred dollars in interest to contract No. 4, is shown in a memorandum of an agreement made and entered into the first day of October, 1912, by and between the New York Municipal Railway Corporation and the Brooklyn Rapid Transit Company.

You will bear in mind that the New York Municipal Railway Corporation organized on the 27th day of September, 1912, and on the first day of October, 1912, they entered into this agreement whereby the New York Municipal obligates itself to pay practically all of the cost of financing by the B. R. T. Company. Now, Doctor, have you ever figured out just what the financing will cost the New York Municipal by this arrangement, or to put it in the briefest possible way, how much they received in percentage on their bonds? A. I have never made a complete statement, but I have a statemnt embodying some of the various expenses of financing. In round numbers, we have to start with this two million dollars of discount on the forty million dollars of notes.

Q. You mean that it is the four and one-half per cent. discount on the forty millions or the five per cent.? A. Practically five per cent.

Q. Mr. Harkness in his memorandum said about four and one-half. A. I think that is a mistake.

Q. I think myself it is. A. He must know that is an error. The exact price would be \$95,023, in round numbers, two million dollars. Then another twenty million of notes were sold the latter part of 1915, and there was a discount of five hundred thousand on those.

Q. The same process went through with regard to the additional twenty million as with the forty million? A. Yes. The discount is shorter because the term is shorter.

Q. Let me ask you. Has that transaction of twenty millions of additional notes and bonds been through a determination? A. No.

Q. That remains undecided as yet? A. Yes.

Q. How about the other percentages? A. The three per cent. allowed on the New York Municipal bonds on the entire sixty millions amounts to one million eight hundred thousand dollars.

There is bankers' commission of one per cent on the B. R. T. notes, amounting to six hundred thousand dollars.

Q. That was the percentage of commission to the brokers, one per cent.? A. Yes.

Q. Aggregating four hundred thousand dollars on the first forty million and an additional two hundred thousand on the next twenty million? A. Yes.

Q. Then there were legal expenses of the counsel, the bankers and the trustees amounting to one hundred thousand dollars. Now, those items amount to five million dollars and there are some additional smaller items? A. Yes.

Q. The mortgages of course would come in there? A. Yes.

Q. You have five million dollars of cost there on the financial transactions of the B. R. T., carrying out contract No. 4 and the allied certificates. That would represent a discount of how much, what percentage of discount from the sale of the notes. About eight per cent. isn't it? A. About eight and a quarter per cent.

Q. So that the New York Municipal Railway actually sold its bonds on a basis of ninety-one and three-quarters. A. That is true with some qualifications because the sale of those bonds is not yet completed. The banks that took the B. R. T. notes have an option on the purchase of the bonds that expire October 1, 1917, purchased at ninety-seven. If that option should not be exercised and the B. R. T. should be able to market the bonds at a better price than ninety-seven, it would have to account to the New York Municipal for the profit.

Q. But as a matter of fact, the Engineer or Commissioner or both have already allowed a discount either in the form of straight discount of three per cent., which amounts to one million, two hundred thousand dollars on the forty million and the interest and discount transactions of one million nine hundred and ninety thousand eight hundred dollars as a discount already allowed. A. No, that is not quite true. The Commission does not allow the entire one million two hundred thousand dollars. That is taken in in the determination of the cost only as it accrues.

Q. It will accrue, won't it? It is inevitable that it will accrue. A. You said that it had already been allowed.

Q. It appears in this determination. A. Not the entire amount.



Q. Only what has been earned up to date? A. Yes.

Q. But before they get through, because the banks' agreement is upon that three per cent. discount and if they fulfill their operation they won't want that discount changed. A. Well, if the profit remains on the sale of those bonds.

Q. How can there be a profit over the ninety-seven, if the banks take up their option at ninety-seven? A. What if the banks do not take up the option and the company should be able to sell the bonds at anything over ninety-seven, presumably the profit should be credited to this account.

Q. I wonder if we might have Dr. Weber's tabulation showing the cost as you have given it here of something like five million dollars read into the record so it will be intelligent in our record how you get your computation. A. This isn't in just the shape that I should like to have it go into the record, because not all of these payments are chargeable to cost.

Q. Well, my question was: What did it cost the New York Municipal to finance its contract obligations with the city? A. Well, my statement wouldn't show that either, because some of these are subject to later credits, reductions; I think the amounts that I read off cover substantially all the amounts.

(Adjournment until 2:30 P. M.)

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### AFTERNOON SESSION.

Mr. Shuster.—Is my understanding correct that whatever is allowed in these determinations becomes a part of the capital account of the New York Municipal Railway Corporation? A. Yes, that is true that the mortgage of the New York Municipal Company provides that the proceeds of the bond shall be used only for such purposes as are chargeable to the construction and equipment account and included in the termination of cost by the chief engineer. That has reference to the first \$60,000,000.

Q. And whatever is allowed these various determinations to the leases, either of the Interborough or the B. R. T. contract, will affect the recapture price to the city in the event of recapture? And it likewise affects the amount of deductions from revenue before the city receives its interest on its investment, or before the city

would be entitled to any divisible part of the net profit? A. Yes, that is entirely true so far as the B. R. T. contract is concerned, and it is true as to the new investment made by the city under the Interborough contract. The interest on the bonds in the old subway is a prior charge of the company's interest.

Q. Now, during the noon hour you or your assistant called my attention to the provision in the revenue clauses of the contract providing that the lessee shall ultimately reduce the cost of construction borne by it by a million three hundred thirty thousand dollars to absorb this excess discount, is that correct? A. Now, that deduction is to absorb all of the interest paid by or on behalf of the lessee prior to October 1, 1912, prior to October.

Q. Prior to October? A. Prior to March 19, 1913, don't you see?

Q. Yes. And it is not necessarily a part of this interest discount a million nine hundred and ninety thousand dollars allowed in the determination. A. No, it is independent of that. The only bearing it has on that would be the method of calculating that deduction and the rate at which that deduction was computed.

Q. Then, I am still right in my understanding that that \$1,330,000 does not go to reduce specifically this item of discount of one per cent. for the six years that it is asked for by the Brooklyn Rapid Transit and allowed in this determination? A. Yes.

Q. Well, how do you figure that out, oh, I am right? A. Yes.

Q. Now, Dr. Webber, do you recall that you were before the subcommittee in regard to this matter a short while back? A. Yes, sir.

Q. And I will read your testimony, a portion of it here and see if you are still of the same opinion:

You were asked questions and it was understood throughout the commission forces that this prior determination had been discussed by the commission, and undoubtedly the chief engineer consulted with the commissioners in regard to that answer. I will say further that my opinion was based on that particular bill and that I advised an allowance of \$1,990,800, should not be included for the reason that it was discounted present interest, but the commission took this view that their understanding with the Interborough and the New York Municipal was that interest was to run during the

construction period at six per cent. and that the B. R. T. had financed the Municipal on that basis of six per cent. interest and they claimed that it was immaterial as the company took the position that as far as the city was concerned whether the interest was reckoned periodically at six per cent. during the construction period or reckoned at five per cent. and at one per cent. discount, provided, however, that the one per cent. prepaid interest did not run beyond the construction period. And inasmuch as some of the construction would be completed before July 1, 1918, it would appear chargeable to operation and not construction.

For that reason a stipulation entered into for the deduction of the one per cent. for the time of operation that the railroad began. Is that correct? And still your opinion and recollection in regard to the matter is unchanged? A. Yes, sir.

Q. And you did as a matter of fact advise against the allowance of this item of \$1,990,800, in the determination for the reason that it was a discount and not interest? A. Yes, sir.

Q. Mr. Turner likewise advised the same way, did he not? Did you know about that? A. I would have to say that I think I did. I am not positive.

Q. Well, we have his letter which we read into the record this morning which indicates very strongly that that was so. Were all of the commissioners agreed in concurring in that conclusion against your advice? A. Yes.

Q. And do you recall who constituted the commission at that time? A. Mr. Eustice, Mr. Cram and Mr. Williams were among those on the commission.

Q. You don't know, or do you know if any of the officials of the city constituting the Board of Estimate or its representatives were consulted and acquiesced in the point of view of the commission as against your advice? A. No, I do not know as to that.

Q. You, in your calculations this morning mentioned \$600,000 paid as a fee or a brokerage charge by the New York Municipal Corporation in connection with the sale and purchase of the notes of the B. R. T. Company. Do you know whether or not there has ever been any effort made to capitalize that \$600,000 by the New York Municipal Railway Corporation? A. Yes, sir. The records of the commission will show that the company asked to have

that included in the determination of costs originally, and that subsequently the company applied to the commission for the consent to issue capital stock, to discharge that obligation.

Q. Do you know what became of that proceeding? A. It is at present before the commission for consideration; the hearings have been closed.

Q. The hearings have been closed in the matters now before the commission for its determination? A. Yes, sir.

Q. Dr. Webber, as an expert in financial matters, what do you say as to those brokerage charges and commissions upon the sale of the securities of the company being made capital items? A. In my opinion those charges are a part of the expense attaching to a notation of a loan and they should be spread over the term of that loan, should it not, therefore be capitalized in capital stock which is permanent.

Q. Yes, and the proper thing to do would be to pay that out of income. A. During the term of the loan, yes.

Q. Not as you do, anticipate what the Commission will do with it. You expressed such an opinion to the Counsel and the Commissioners pending the proceedings, did you not? Or at some subsequent proceeding when they attempted to capitalize the four hundred thousand dollars. A. Yes. There is a written memorandum somewhere in the records containing that opinion.

Q. As a matter of fact, the Company has endeavored three times to capitalize or procure capitalization and recognition of this commission as capital item of the commission. First, through the prior determination, second, upon the notation of the forty million and at the preset time for six hundred thousand, including the same brokerage on the additional twenty million. A. Substantially there were two applications, the first to the Chief Engineer in connection with the prior determination and the second on an issue of stock for this brokerage and for the advertising expenses of some one hundred thousand dollars. It was withdrawn from that application and a third application was made for this brokerage separately.

Q. Well, has any capital stock been authorized to be issued to take up any part of this commission or brokerage to your knowledge? A. No, sir.

Q. Had these publicity expenses been allowed by the Engineer, they too would have been capitalized would they? A. Yes, sir.

(Mr. Moss acts as Chairman at Senator Thompson's request.)

Q. If your engagements are such that you must be spared, Dr. Webber, we will not detain you any longer and you need not return unless requested.

(Mr. Harkness recalled.)

Q. Mr. Harkness, you are more or less familiar with the prior determination on the New York Municipal Railway contract No. 4? As of November 24, 1913? A. Yes, sir.

Q. And you are familiar with the manner in which that determination was arrived at? A. I think so.

Q. Did your department have anything to do with the auditing of the bills upon which this determination is predicated? A. I don't know whether any matters were formally referred to the legal department but I think there was a preparation for that determination. I was in touch with such workings through conferences with the Chief Engineer or his assistants or Dr. Webber or the Commissioner. The report I remember best is the discussion with regard to the bills that were disapproved.

Q. What bills were those? A. As I remember it, there was a claim of four hundred thousand dollars for bankers' commission, a bill of around eighty or ninety thousand dollars for the services of, I think, Joe Linroth, a rate man and some others who were counsel to the Trustees and a bill of something around one hundred thousand dollars for preliminary publicity expense.

Q. The amount ultimately allowed under the item of "Sundries, etc.," as testified to by Dr. Webber and as a percentage in the determination is two hundred and seventeen thousand, one hundred and fourteen dollars. A. So I understand.

Q. Were any of those items discussed with you? A. I think I probably saw them but I haven't any recollection of it now.

Q. Are you familiar enough with the organization and intercorporate relations of the B. R. T. and the New York Municipal to give us briefly the history of that organization and its connection

with the B. R. T. and the New York Consolidated Railroad Company? A. Perhaps this will cover that question. The rapid transit lines in Brooklyn prior to 1913, were operated by the Brooklyn Union Elevated Railroad Company, the Kanassa Line and perhaps one other. The stock of these lines was owned in one way or another or controlled by the B. R. T. which is a holding company. The rapid transit operators were consolidated in 1912 to 1913 with the New York Consolidated Railway Company, practically all of the stock of which is owned by the B. R. T. Then in order to make the subway contract as I stated yesterday, a new corporation known as the New York Municipal Railway Corporation was formed and it was to that corporation that Contract No. 4 and the allied certificates were made. I understand that the entire capital stock of the New York Municipal Railway Corporation is owned by the New York Consolidated Railway Company.

Q. Is that the operating company? A. Yes, and it practically stands in the place of the old Brooklyn Union Elevated Railroad Company.

Q. After the dual contracts were signed, the least part of the contract, No. 4, being signed by the New York Municipal Railway Corporation, and the operating lines under the operating certificates of the New York Consolidated Railroad Company, do you recall what date that assignment was? I A. don't. I think I had the papers here yesterday. Have you that leather bound volume I gave Senator Thompson yesterday?

Q. I guess he took that up to his room for safe keeping. A. It was shortly after the contracts were signed, along in April or May, 1913.

Q. So that as the matter now stands, the New York Municipal Railway Corporation which contracted with the City and which is financing the operations of construction under Contract 4, has become resolved into a constructing corporation. A. Constructing and equipping corporation.

Q. And when the construction and equipment is completed, the provisions in the lease will be carried out under that assignment? A. Well, there will be a certain amount of construction and equipping all during the time of the lease.

Q. The Public Service Commission approved of that assignment to the New York Consolidated. A. Yes.

Q. Those lease rights are a part of the security underlying bonds in the mortgage given by the New York Municipal from which it raised the sixty million dollars? A. Yes.

Q. And that assignment is doubtless taken subject to the right of the Trustees under the mortgage? A. Yes, sir.

Q. What is the reason or excuse for the New York Municipal Railway Corporation which contracted with the City to divest itself of the lease rights in that contract? A. I may be wrong as I said yesterday. I did not handle the issuing of those bonds and I am not entirely familiar with them, but I know personally I always looked on the New York Municipal Railway Corporation as a corporation that was formed so as to label the making of a first mortgage which wouldn't have been possible if the operating contract had been taken in the first instance by the Brooklyn Elevated Railroad Company, and that the main purpose of the formation of the New York Municipal was to carry out that arrangement.

Q. Well, was it within the contemplation of the representatives of the City in negotiating and making the contract with the Brooklyn Rapid Transit or the New York Municipal, that it should divest itself of those lease rights? A. I think it must have been. The matter was all taken up with the conferees during the negotiations, subject to discussion.

Q. So that the Public Service Commission and the Board of Estimate and Apportionment knew that this situation would be carried out just as it has been carried out? A. Substantially so, I should say.

Q. Now referring again to the prior determination on page 46 where it is set forth the items that are allowed as interest to the New York Municipal, aggregating two million, three hundred and ninety-eight thousand, two hundred and ninety-eight dollars and twenty-nine cents, prior to the making of the contract, as an allowance. Did you have anything to do with the disposition of that bill? A. I was present, I think at most of the conferences on that. My recollection is that that was taken up directly with the Commissioners.

Q. By the company itself? A. I think the present company

took it up directly themselves. I was probably present at the conference.

Q. And in that way the parties to the contract eliminated the necessity of the Chief Engineer making a determination in accordance with the strike provisions of the contract did they? A. I should put it, Mr. Shuster, that the parties that contract reached understanding as to what the contract contemplated, the Chief Engineer followed that out.

Q. That would be eminently proper in the case of individual contracting or private corporations; but having in mind here that one of the parties to this contract is the Public as represented in the city of New York, do you think it is a matter of law that officials have a right to modify contracts of a public nature of this character without something more formal than a mere arrangement between the Public Service Commission, which is nothing but the agent of the city, and the corporation? A. I should say without any hesitation that the parties in the Commission had no right to modify the contract but I don't understand that it was done in this case.

Q. You think this did not result in a modification of the terms of the contract? A. A modification of a contract that is attempted to be carried out is illegal because a modification of a contract must have the approval of the Board of Estimate.

Q. So that if the City authorities are able to demonstrate in the courts that there was a modification as a result of this resolution, then clearly the transaction is illegal and the determination must fail. A. It seems so. The functions of the Chief Engineer of the Commission must be exercised.

Q. Did he do so in this particular instance? A. I understood so.

Q. Was that your advice to him? A. I don't know as I gave any advice to him on that matter.

Q. You knew that his confidential first assistant opposed the allowance of the first item in this bill, namely, the interest on forty millions of six year five per cent. notes sold by the Brooklyn Rapid Transit Company and charged in excess over and above the contract rate of interest, which we call a discount, this discount being charged against construction and equipment. A. You mean the remarks made by his first assistant, Mr. Turner?



Q. Yes. A. I don't remember Mr. Turner's opposition. I remember that Dr. Webber opposed it and that the discussion was before the full Commission and the conferees. As you say, there was some discussion as to the precise limit of discount and various questions which struck me as more or less of an accounting proposition. Commissioner Maltbie voted for this thing, approved it, and to my mind it was very largely in the nature of a counter proposition.

Would the fact that Mr. Maltbie voted for it necessarily preclude an inquiry into its reasonableness and propriety? A. I am simply stating that so far as my action is concerned, that Mr. Maltbie is one of the shrewdest and clearest headed men on accounting that I have ever come in contact with and naturally unless I was asked to look into a thing, I wouldn't be inclined to go contrary to his judgment.

Q. Why were you asked specifically to look into this matter? A. I have no recollection of it except that the question involved there was whether the understanding of the conferees was that the B. R. T. notes were to be issued as five per cent notes on a six per cent. basis.

Q. Yes, that is true. A. If my recollection is clear that I was asked as to that, I would certainly have answered that that was the understanding of the conferees throughout the negotiations, throughout the latter part of them.

Q. Isn't it a fact that you yourself came to the conclusion that the strict letter of the contract did not technically allow this discount to become a part of the Lessee's expense of interest? A. I have no recollection of that.

Q. Let me refresh your recollection in regard to that. On July 9, 1913, I find a memorandum here by Mr. Harkness, prepared as a memorandum for the Chief Engineer, in which you discuss this matter somewhat at length. It says, "The contract of March, 1913, with the New York Municipal Railway Corporation provides for including in cost, interest paid or incurred by or in behalf of that corporation prior to the date of the contract."

"That contract also provides for including discount allowances restricted to three per cent. of cost. In financing the enterprise the B. R. T. issued on account of the New York Municipal Railway Corporation, its notes bearing interest at five per cent., sold

on a six per cent. basis. That is, the banks deducted from the purchase price of the notes a pre-payment equal to one per cent. during the life of the notes which was equivalent to selling them at about ninety-five and one-half. It is the amount of this pre-payment that the company wished charged up to cost and it is this that is included in the Commission's resolutions and in one of your letters of June 30. As Mr. Turner urged in discussing the matter with you, prepaid interest is nothing more or less than prepaid discount and the contract prohibits an allowance for discount in excess of three per cent. of cost. That is technically correct but throughout the negotiations leading up to the signing of the contract we were rather thoroughly acquainted with the B. R. T. financial plan and knew that its engagement was to issue five per cent. notes on a six per cent. basis and that the company intended to charge up six per cent. interest during construction.

To this no objection was made by those acting for the city and in effect this arrangement is recognized in the contract since the amount to be deducted from the Company's profits to reimburse cost because of the provision of the Company's money so far in advance, was computed upon that basis. This was so thoroughly understood that an attempt to stand upon the literal text of the contract in opposition to the real understanding, would, it seemed to me, constitute a breach of faith."

Now, Mr. Harkness, how far can a public official go behind the literal text of a public contract to avoid what might in conscience be a modified question of a breach of faith? A. That is a question of judgment. I might say that as far as that is concerned, my recollections as given here on the stand this afternoon are in conflict with that memorandum but of course the memorandum is correct. I never thought about that matter from that time to this. So I am giving a very general recollection. You must remember, Mr. Shuster, that this was taken in the sense of another point of view. The New York Municipal officials claimed that the contract literally covered what they wanted to charge in and there was a dispute on that.

On any question where there is a dispute, there are two sides, a right side and a wrong side, but finally a clear understanding was arrived at. It seems to me that the public officials were justified in carrying out the real understanding. On the other hand—

Q. Now let us assume that all of the officials who have participated in this matter on behalf of the City had decided before this question arose, what would the courts be likely to do with the situation, would they say that the City was entitled to have its contract interpreted in accordance with its literal sense or so as to avoid some oversight in the making of that contract. If the parties failed to put all their understandings into the contract, as a matter of good faith they ought to yield. Do you think the courts would take that attitude? A. It is possible on the extent of the old testimony. I haven't looked into the thing and checked it up but my recollection is that there is a provision in the contract in regard to returning amounts on account of excessive interest charged which on the face of the contract bears out that contention. I haven't checked that up but I think it is referred to in the memorandum you read.

Q. Mr. Turner's memorandum is also here and he refers to the memorandum which I just read from. He says: "Although this question was before the conference and understood then, as I understood the contract and I believe Mr. Harkness agreed with me, the contract did not clearly provide for the payment of this prepaid interest which is in a sense discount, in excess of three per cent. My only purpose in objecting to the program when we polled was to make the records show a consistent disposal of the matter. You were not a party to the conference. The instrument for your guidance in your determination was the contract. And if the contract did not clearly stipulate that such prepaid interest was to be allowed, I thought it proper that you make a determination which excluded it and permit it to be appealed and thereby allow the matter to be decided upon its merits by the Commission with full knowledge of the facts."

Now, following Mr. Turner's suggestion there, this matter could have been disposed of and a correct interpretation had in the courts on this matter. Where nearly two million dollars is involved, the City could well afford to have had that matter determined by the courts before you arbitrarily disposed of it. A. Your saying that a correct interpretation could have been had, assumes that the determination which was reached was incorrect. That I am not prepared to grant.

Q. I am simply taking your own concession here that this was

technically correct. Mr. Turner's position was technically correct and you relied entirely upon the moral persuasion of the situation and not the legal. A. That includes the further element that here was a question in dispute.

Q. Well, Mr. Harkness, I find in looking through these records that the Engineer did make a determination prior to this, some time in October of 1913 or 1914 and that determination was made as he had a right to expect finally and all of the parties were served with that determination. The Railroad Company not being satisfied with it, instead of taking their appeal or filing their objections, they succeeded in having him withdraw that determination, largely with the assistance of the Public Service Commission. I haven't been able clearly to discover what was the reason for withdrawing that original determination. A. Was that the withdrawal that was provided for in the stipulation with the Interborough at that time?

Q. Yes. You wrote a memorandum on it and it has to do with this question of the interest accruing on so much idle money. This memorandum is dated November 13. I will read this from it:

"There is this further point in connection with the matter. One of the most difficult questions presented in the latter part of the subway negotiations and one that nearly broke up the negotiations with the B. R. T. Company was the matter of excessive interest charges. The B. R. T. Company by reason of being forced into it by its bankers borrowed forty million dollars on October 1, 1912, although that money could not be expended for three or four years.

"The City officials insisted that the proper course would have been for the Company to borrow its money on the basis of quarterly or at least annual needs and requirements, the Company to absorb the additional interest that would be paid under its plan as against the plan contended for by the City.

"After long negotiations it was agreed that the Company would absorb one million, three hundred and thirty thousand dollars, representing this excess interest. This figure was based upon estimates agreed upon by the Chief Engineer of the Commission and the Chief Engineer of the Company,

which involved forty million dollars for additional tracks and extensions during the first, second and third years."

Now, that seems to be a part of the transaction. The records here are not complete. A. I can't see how that applies to that withdrawal if that follows what you read before in regard to interest.

Q. It is all here together. A. In a reply to the question of that interest allowance under the resolution?

Q. Your memorandum starts out this way, "With reference to the application of the New York Municipal Railway Corporation for the withdrawal of the Chief Engineer's determination of October 14, 1913." That is the way it starts out so I assume this must be a reply to that part of it. A. My recollection in regard to that withdrawal was this, that there were various amounts charged up through a process of validations to the third-tracking and extensions authorized under the certificates of March 19, 1913, but the Company couldn't throw down money on them because they hadn't received the consent to the construction of those roads and therefore the banks wouldn't be justified in making advances. They desired to have those temporarily charged until the roads were legalized to reconstruct existing railroads and then I remember in connection with that that Mr. Turner had told me from time to time of the difficulties in making definite calculations at the start so that as things came along I saw an advantage to the City and to the Chief Engineer on the accounting end in getting some understanding that these calculations could be made to vary from time to time and I think that the purpose of withdrawing that determination was purely a matter of changing the calculation. As I say, I probably haven't thought of it from that time to this.

Q. Dr. Webber, do you remember that letter where there were any changes made in the amounts as a result of the re-determination?

Dr. Webber.—My recollection is that there was a shifting of certain general expenditures like the interest charges from the third-tracking and extensions where the calculations were made on the basis of final cost, into the cost of reconstruction of the existing railroads.

Q. But it didn't change the purpose?

Dr. Webber.—It didn't change it totally but the Company couldn't draw down from the proceeds, any charges made against the unlegalized parts of the contract and the third-tracking and extensions had not been legalized at that time.

Q. Well, such a stipulation was entered into whereby the Engineer is given the right to calculate in accordance with that stipulation and it was confirmed by both parties.

Dr. Webber.—I think that stipulation was printed in the determination.

Q. Mr. Harkness, do I understand that you concede as a matter of fact that the resolution of June 30 did modify the contract any? A. No.

Q. Your position is that it did not modify the contract but simply went to explain the contract? A. As I said, it was simply carrying out the contract.

Carrying out the executed contract? A. The contract and the terms of the contract.

Q. Well, what do you say as to this item, is it interest or discount, this item of one million three hundred and ninety-eight thousand two hundred and ninety-eight dollars? A. In reality it is interest.

Q. The note obligation expressly provided for five per cent., didn't it? A. So I understand.

Q. Now the Brooklyn Rapid Transit Company before there ever was any New York Municipal Railway Corporation in existence sells forty million dollars worth of bonds by some collateral agreement changing the rate of interest to six per cent. with the bankers. Is that a fact? A. I don't know by just what agreement it was or whether it is expressed in that B. R. T. trust agreement that I left to Senator Thompson yesterday, it may be in that.

Q. The mortgage? A. What they call a trust agreement, I think, covering this forty million dollar issue of notes.

Q. That is the contract between the New York Municipal and the B. R. T.? A. No, it is a collateral trust agreement.

Q. Were the banks a party to this? A. Between the Brooklyn Rapid Transit Company and the Central Trust Company.

Q. That was its trustee under the mortgage? A. That was independent. That mortgage was made by the B. R. T. long before the subway contract was executed, I think probably under date of July 12, 1912.

Q. Well, this whole transaction, all of these allowances, was prior to the making of the contract? Now, how do you reconcile the situation? You have here a note obligation expressly providing for five per cent. that is sold on a basis or an agreement that the banks shall deduct one per cent during the period of six years in excess of the interest they will receive on the accrual of interest under the terms of the notes. Now, how can you make that interest and not discount? A. It is a question of whether it is what might be called prepaid interest which is at all times discount.

Q. Well, let's see what you consider it? A. In other words you get the same result whether you have a six per cent. note at par or a five per cent. note at something less than par so as to make the six per cent. payment on it.

Q. Well, the definition of interest as it is in the contract is concise, is it not? "Interest that is to be allowed here is the interest that is actually and necessarily paid," and the B. R. T. obligated itself to pay five per cent. interest. A. That is a question, whether they did or not. Whether the real arrangement was to pay six per cent. interest.

Q. What do you mean by the real arrangement? A. It may have been under the guise shown on its face as a five per cent. note whereas in reality everybody attempted to pay a six per cent. note

Q. As a matter of fact, did not the banks deduct at the time they paid over the proceeds of those notes to the B. R. T. one per cent. covering the life of the notes? A. I have no knowledge of it.

Q. You must have had knowledge at sometime. I again refer to your memorandum of July 9, 1913, wherein you say that the sold notes bearing interest at five per cent. on a six per cent. basis and you say that the bankers deducted from the purchase price of the notes a prepaid amount equal to one per cent. during the life of the notes? A. On the assumption of a five per cent. not a six per cent. basis.

Q. In ordinary banking contracts would you call that interest or discount? A. I won't by any means give a general opinion on that. I think that generally that would be considered as the payment of interest. I think that the average man would look on it as such.

Q. When you go to the bank and sell my note to the bank and they deduct one per cent. from the par value of that note, you call that discount, don't you? A. I suppose so.

Q. The banking world calls it that, does it not? A. I simply say I suppose so.

Q. Doesn't the law call it discount? A. You are getting out of my line on that, Mr. Shuster, just how far they go.

Q. Now, Mr. Harkness, you are getting more into a matter of accounting than law. Here was a contract that provided that there should be a discount not in excess of three per cent. on the sale of securities by the contracting company, that they were to be allowed the actual and necessary interest paid. They issue a five per cent. note, take it to the bank and sell it to the bank and agree to pay that bank five per cent. for the paper they are selling. The bank agrees to take it but on the condition that they deduct out of the proceeds of that note, one per cent. for the life of the note which amounts in the analysis to one million nine hundred and ninety thousand eight hundred dollars. Now, is that interest or discount as a matter of law? Under the circumstances, I think it is in reality interest.

Q. The circumstances that changed your mind on that proposition is the fact that there was a moral obligation on the part of the City because its conferees had assumed or had agreed in their verbal arrangement that the Company should charge six per cent. interest during construction. A. No, it was because of the understanding that the Company was to pay six per cent. interest during construction.

Q. But what would that have to do with what it cost them to buy their money, the fact that they are allowed six per cent. interest during construction, wherein is there any relation between interest allowed during the period of construction and what it cost the corporation to finance its operation under the contract? A. I don't think I get the full meaning of your question on that. The



point I started to express was that the intention was to issue in effect a six per cent. note but for some reason which I don't understand, the reason going back to arrangements with the bankers, they put out a five per cent. note. I don't think that would change the situation.

Q. Back here in November, 1913, you say, "The B. R. T. by reason of being forced into it by the bankers, borrowed forty million dollars on October 1, 1912." That was before the contract with the city was secured. What do you know about the bankers forcing the B. R. T. to do this? A. I will have to give you my general recollection on that.

Q. If you would like to see this, I would be glad to give it to you. A. The B. R. T. during the late summer and early fall of 1912, were very anxious to have the contract fixed up and signed because they said that by the arrangement that they had with the banks they would have to take forty million dollars on B. R. T. notes on October 1, or else throw overboard their financial arrangements.

Q. Who were the bankers at that time? A. Kuhn-Loeb, I think. You will find that in the records of the Commission there are letters from the New York Municipal or B. R. T. officials to Chairman Wilcox, making that point and urging the speedy completion of the contract.

Q. As a matter of fact, the B. R. T. got itself into a hole and that was one way to help them out, was it? A. You mean what happened after the contract was signed, no, that had nothing to do with that. The point came up at a late stage of the negotiations, I should think probably in December, 1912, to January 12, 1913, and the city officials realized for the first time that the B. R. T. plan was to charge up the interest on the whole forty million dollars from October 1, 1912. There was an immediate protest on the part of the city officials who wouldn't stand for it.

It led to such a breach that toward the end it threatened to bury the success of the negotiations and it finally was settled through the compromise set forth in one of the propositions in the latter part of the contract which provides for the B. R. T. to eventually absorb what was considered or agreed on as a matter of compromise.

Q. Now let us get down to plain terms on that plan. As a matter of fact, despite the opposition of the City officials, this determination has been allowed to apply on that very item, that very discount. Now, this three hundred and thirty thousand dollars that you refer to has nothing to do with the capital account at all. It is a deduction to be taken out of the revenue. A. To reduce capital account.

Q. Where does that appear? A. In the contract itself.

Q. To reduce their cost of construction? A. Cost of construction which is another term for capital account.

Q. But you got into the capital account and they entitled you to interest in it, did they not? A. Yes.

Q. And the only time that it would be taken out of capital account is when the revenue is sufficient during a period of years to do so? A. Yes. That comes back to the question of whether the adjustment made at that time was good or not.

Q. Is that any different from adjustments on machinery? A. I don't think you can defend that arrangement as a logical adjustment.

Mr. Moss.— May I ask a question? I want to ask you about this, Mr. Harkness. You just stated in substance, that this question about interest imperiled the success of the negotiations. Do you mean to say that the negotiations for the Dual Subway were imperiled so far as the B. R. T. itself was concerned by this dispute about interest? A. Yes.

Q. Well then, the City could have gotten out of an alliance with the B. R. T. if it had stood firm on that interest question? A. I should say there were probably some other matters. There was a matter that was looked into by this Committee before it. A matter of sinking fund charges.

Mr. Shuster.— As a matter of fact, it isn't allowed in the contract.

Mr. Moss.— On this idea if the City could have gotten away from the B. R. T. in its demand with reference to the short haul proposition with the Interborough—if the City could have gotten away from that, mightn't it have been a good thing? A. Well, that comes back to the general question of advisability. The conferees didn't think it would be.

Q. But the B. R. T. was fighting to get in, wasn't it? A. You can put down my opinion for what it is worth, but I think that the B. R. T. contract is eventually going to be a good thing for the city.

Q. I am not asking you that. The B. R. T. was fighting to get in, wasn't it? A. Yes.

Q. And it was seeking to cut into the short haul business on the Manhattan side, wasn't it. A. Well, that would be one result.

Q. That would be one result and it was the combination of interests or rather the conflict of interests between the B. R. T. and the Interborough that was largely holding up the situation, wasn't it? A. I say that would be true in the early stages, during the latter stages of the negotiations, there is the difficulty of working out each contract with the Company involved. That is, a newspaper campaign and a great deal of the competition in the spring and early part of 1911.

Q. Well, do you know why it was that the Public Service Commission didn't say to the B. R. T. substantially, "Go out if you want to and we will deal with the other folks." A. I think that the Public Service Commission and more especially the members of the Board of Estimate were most anxious not to lose the B. R. T. in the enterprise, because as has already been testified here, that question of sinking funds on non-recapture of the property, the Commission was prepared if necessary to break off the negotiations on that point. But the Board of Estimate wouldn't stand for that.

Q. That is be satisfied that the City had to yield to the Interborough on the third-tracking question because the Interborough would have gone out if it hadn't its way on the third-tracking. Now, the City had to yield to the B. R. T. on this interest question or the B. R. T. would have backed out. Wasn't that a place where the City could play each Company against the other and have its will rather than allowing each of those conflicting interests to have their wills. A. It is a question whether that system would have been used as I recollect that that simply extends to Manhattan and didn't touch Brooklyn at all.

Q. It had a tunnel in Brooklyn. A. Did it go far into Brooklyn?

Q. I don't know how far. A. To understand the position of the

conferees that is to be taken as a fundamental point. Now, the conferees, leaving out two of the Commissioners and one member of the Board of Estimate were determined that if it were a possible thing to make arrangements with the Interborough Company and the B. R. T. so as to neutralize the existing Rapid Transit system, it should be done.

Q. Well, wasn't it the proposition that the City would yield its position on both these points and on other points in order to hold a compromise by which the interests represented in these two railroads had practically agreed to divide the territory. A. I don't say that there was any agreement to divide.

Q. That has been mentioned several times. A. I never heard any tangible proof on that.

Mr. Shuster.—Now, Mr. Harkness, it appeared that the New York Municipal Railway Corporation and the Brooklyn Rapid Transit Company entered into a contract dated October 1, 1912, whereby the B. R. T. agrees to purchase the forty million and if necessary the additional twenty millions to carry out this contract, No. 4 and allied certificate. Was that contract exhibited to and considered by the conferees? A. There was a contract I have in mind which was the one you showed me yesterday. That contract as such was not. I think it was after the contract was signed, possibly just before the B. R. T. submitted that to the Commission for approval and I remember advising it on the ground that it wasn't necessary but although that agreement may not have been before the conferees, I think the general financial arrangement outlined there was understood.

Q. Do you know whether as a matter of fact this contract was ever approved by the Commission? A. I don't believe it was.

Q. And is there anywhere in Contract No. 4, or in any of the allied certificates to Contract No. 4, where this financial arrangement is referred to in any particular? A. I don't think there is in the contract.

Q. This contract was before the Commission and discussed on the 30th of June, 1914, when it passed a resolution approving of this discount item. A. That agreement was?

Q. Was it? A. I don't know.

Q. Do you know what basis the Commission had for allowing

this item of one million nine hundred and ninety thousand eight hundred dollars? A. I remember that there was a rather lengthy discussion on this thing between the Commissioners themselves and officials of the Railway Corporation.

Q. Do you know whether there is a stenographic record, a type-written record of the conference? A. I think probably not. I don't know.

Q. And you don't recall that this specific contract between the two corporations was at any time before the Commission as a part of the data upon which they passed that resolution? A. I don't remember of it being before the Commission in connection with that matter.

Q. It is by reason of this contract that the New York Municipal Railway Corporation asked to pay the Brooklyn Rapid Transit Company that one million nine hundred and ninety thousand eight hundred dollars, is it not? A. I don't know whether it is or not.

Q. Well, perhaps you had better look at the contract and see. A. I think that was between the two companies that this does seem to tie up the financial arrangement made by the B. R. T. on behalf of the Municipal Corporation.

Q. There is no doubt about that. I will ask to have this spread on the minutes as an Exhibit, not written into the minutes. I offer it in the evidence.

(Exhibit No. 1. Contract between the New York Municipal Railway Corporation and the Brooklyn Rapid Transit Company, dated October 1, 1912. Copy of contract furnished by Public Service Commission.)

I believe you said that you were not consulted in regard to the Superintendence items that are allowed in this determination. A. I think I said that I have no recollection of it but that statements like that were in force and various others so that while I probably saw that, I have no recollection of it. But I remember more distinctly the discussions about items that were disallowed.

Q. You were not asked to pass upon the reasonableness or propriety of the allowance here made to the New York Municipal for its administrative salaries?

Mr. Moss.—One of which is fifty thousand dollars allowed to T. F. Williams. A. I have no recollection of it. I don't know

whether the records would show that it was ever officially referred to counsel. I doubtless saw that paper.

Q. I don't see anything here where you have committed yourself on this. A. I think I doubtlessly saw that paper and other bills that were put in and discussed them with Mr. Turner and Dr. Weber and probably the Commissioners.

Q. Is it not a fact, Mr. Harkness, that after the execution of the contract that the B. R. T. or companies that Mr. Williams represents as president, voted him extra compensation for services rendered in connection with that contract? A. I have no knowledge of that. The only information I have is that in the course of this investigation something was published in the newspapers to the effect that he was paid one hundred thousand dollars.

Q. You don't know of your own knowledge and there is nothing in the files to show it? A. Nothing that I know of.

Q. And do you know what this fifty thousand dollars represents, what statement or bill is covered from 1911 to March 19, 1913? Dr. Weber's testimony is that Mr. Williams' salary from all the companies amounted to fifty thousand dollars a year and that they allowed him one-half of that on this proposition. A. That is probably correct. Mr. Williams' time was put in in connection with the subway negotiations.

Q. It also appears in the testimony of Dr. Webber that Mr. Williams had been receiving a salary of fifty thousand dollars for years prior to 1911 or 1912, either, and doubtless he would have received that salary if there had been no negotiations or no contracts. Now then, if as a matter of fact the Corporation recognizes that he was entitled to additional compensation for these additional services, why wouldn't that be more nearly within the provisions of the contract as an expenditure in connection with the contract? A. The only question with us was what was a fair allowance on account of the administrative expense the B. R. T. was put to.

Q. Where do you use the words "fair allowance?" A. Because that was what was involved.

Q. The contract doesn't use those words, does it? A. It provides for receiving the expenditures to account for these purposes preliminary to the execution of the contract.

Q. But the language of the contract is, "Their actual and necessary net cost for Superintendence, Administration, etc." A. That is the expression used and then I think it goes on and says, "Including the portion of such expenses incurred preliminary to the date of the signing of this contract." Those have also been paid.

Q. They must be actual and necessary payments. A. But as they were paid in bulk in connection with other services, it was necessary to use judgment and apportion all of it to the letter as we thought, fairly and equitably, charging it to the subway negotiations.

Q. Well the language is very understandable, is it not? It is entirely proper for them to have straightened out what they thought needed straightening, wasn't it? A. They couldn't have demonstrated them, Mr. Shuster.

Q. Were there any vouchers submitted that you know of? A. I don't know about that.

Q. Dr. Webber says the only voucher is this bill itself, these two bills. They were the vouchers, nothing but bills rendered by one company against the other. A. Isn't a bill a voucher?

Q. Is that your interpretation of what is intended as a voucher? A. But you say there were no vouchers except these bills.

Q. Is a bill or ordinary statement of account an original evidence of debt? A. Not a conclusive evidence, legally, but I think it is an evidence of debt.

Q. What is there in a bill to evidence that there has been any payment or that the bill is either actual or that it is owing? A. The testimony as I understood it yesterday, was that the bill was a base for auditing.

Mr. Moss.— This is what a man says that you owe him without showing what it is for. A. It generally shows what it is for.

Q. It is nothing but a statement of claim, is it? What more is this than a statement of claim? A. It is a statement of claim that was submitted by the company against which it was made, for that matter.

Q. And is it your interpretation of the contract that the City

is bound by any such audit as that? A. I think our action showed very clearly that we didn't consider that.

Q. I would like that explained. A. We cut about six hundred thousand dollars off of it, that is, off of the amount that the Municipal wanted to charge up through bills of that sort.

Q. What relation did you have for not cutting off all the rest of it? A. It must have been because they thought they were proper charges.

Mr. Moss.— You say it is a claim by one company against another, but weren't those two companies associated? A. They were one and the same thing.

Mr. Moss.— It was the claim of my right hand pocket against my left hand loan. A. Dr. Webber testified that those figures, everything, was audited by him.

Q. And he described how he audited them and relied so far as the accuracy was concerned, upon the verbal assurance of the officers of the company that they were correct. And yet we come to pin any of you down, we find that it was largely an allowance just as you described it. A. Take the one that you gave me, Colonel Williams, you can't get anything else.

Q. And I asked you to find anywhere in the contract that they are entitled to have allowances made either by the Commission or the Engineer. A. Because you can't carry out that provision for preliminary expenses in any other way.

Q. Might that not be proof positive that it was not contemplated that any such items should have been allowed. A. No, because you can't give a construction or effect to all the words of that provision without taking in this.

Mr. Moss.— Mr. Shuster has called your attention to the fact that Mr. Williams would have received his fifty thousand dollars whether there was any contract or not. A. And that comes back to the question of the advisability of the assertion of that division in the contract.

Mr. Moss.— But it also comes to the point that Mr. Shuster made of the language in the contract that expenditures must be necessary. Necessary and connected with the work.



Mr. Shuster.— Mr. Chairman, I have no further questions I wish to ask Mr. Harkness today. I am informed that Mr. Craven is ill and for that reason could not be here this afternoon. There are no other witnesses here to take this matter up with it and it is now 4:00 o'clock

Testimony of MR. CALVIN TOMKINS.

Cross-examination by Mr. Moss.

Q. Your name is Calvin Tomkins? A. Yes.

Q. You were formerly Dock Commissioner of the City of New York? A. I was.

Q. And you are the representative of the Tomkins Cove Stone Company? A. Yes.

Q. And it was your company that made a bid for supplying stone which has already come before this Committee? A. We were the low bidders under the specifications.

Q. The successful bidders? I mean the bidder that was allowed to be successful by the Public Service Commission. Was the bid above you the Upper Hudson Stone Company? A. Yes.

Q. We had testimony here yesterday I think it was, from the Public Service Commission represented by the Engineer and his assistant to the effect that the reason why there was a readvertising and the requirement of tensile strength was increased was so as to include your quarry. But your product was dirty and dusty and not suitable for use in the subway on that account. Now, I suppose you know the product of the Upper Hudson Stone Company, you have seen their product and their quarry, is that so? A. Yes.

Q. I am going to ask you how your product of crushed stone compares with the product of the successful aspirant in point of cleanliness and absence of dust. A. In my judgment, one stone is just as good as the other.

Q. You have never had a question raised about the product of your quarry upon that ground before, have you? A. Not that I recollect. Of course there are tests made and sometimes our stone is taken and the other may be rejected, sometimes the other may be taken and ours rejected.

Q. Yes, but that issue has never been made before? A. The specifications called for a compression test of twelve thousand pounds and our stone tested up to twenty-eight thousand pounds. When they readvertised, they raised the requisition to twenty-nine thousand pounds, just one thousand pounds higher. We felt that prejudice existed on the part of the Engineers and we preferred not to bid and take a chance.

Q. When you testified here before, you were asked whether any of the directors, any of the persons interested in the Upper Hudson Stone Company, were interested in the Interborough. You didn't know and so answered but it has since developed that Director Sullivan of the Interborough is a director of the Upper Hudson Stone Company and that Cornelius Vanderbilt, a director of the Interborough is a stockholder in the Upper Hudson Stone Company. Mr. Shaw was in attendance the other day and the reason given in his statement was that Mr. Sullivan had advised him when this matter came up and that he ought to be in attendance. Now, so far as the Upper Hudson Stone product is concerned, is it similar to yours? A. They are both limestones.

Q. So if there is dust in your product because of the presence of limestone there ought to be dust in that because of the presence of limestone. A. That would be it.

Q. Well then, in the use of this stone in the subway— I suppose you know our subway, you ride in it every day as well as most citizens do. A. Yes, sir.

Q. What do you say about the possibility of dust rising from the road bed because of limestone in the ballast? A. Well, there may be dust on a highway but virtually no dust on the subway because everything is down under a mat of oil, at all subway stations and all along the line.

Q. Nothing could arise through it? A. Nothing.

Q. That is all I want, I believe, Mr. Tomkins. I don't think be dust on a highway but virtually no dust on the subway because we have any other business to-day.

Adjourned until 11:00 o'clock Thursday morning, June 8.

**JUNE 8, 1916.**

The meeting was called to order at 11 o'clock, Senator Thompson presiding.

Testimony of MR. CEDARSTROM.

Examination by Mr. Moss.

Q. In a general way, Mr. Cedarstrom, I wish you would tell what stands in the way of the fare to Coney Island being reduced to a 5 cents basis? A. I don't believe I am familiar enough with the subway contracts as a whole to go into that matter and analyze the situation.

Q. Questions have been asked of us, and they point to Article 62, Chapter 3, of Contract No. 4, which says: "The lessee shall, during the term of this contract, be entitled to charge for a single fare upon the railroad and the existing railroads the sum of 5 cents, but not more, provided, however, that the provisions of this article shall not prevent the lessee from continuing to charge until the time when trains may be operated for continuous trips wholly over connected portions of the railroad, including both to Culver Line and subdivision 8 of the Broadway-Fourth Avenue Line from the Municipal Building in the Borough of Manhattan to the point at Coney Island at which the construction of the railroad shall be suspended as provided in Article 7, the same fare for a continuous ride over the railroad and existing railroads at the end of the fiscal year ending June 30, 1912." By the way, people don't seem to be able to understand that. They want us to tell them what it means. But there are portions of the road referred to in that section that are not completed and are not likely to be completed for some time. isn't that so? A. Yes, sir.

Q. And the fare at the time mentioned in that article was 10 cents; therefore, it will continue until the connection is complete? A. Until such connection as called for in that contract; that's as I understand it.

Q. Yes. Now, one of the parts of the necessary connections is Route 49, Section 1, 1A and 2 of the Gravesend Elevated Line? A. So I understand.

Q. I want to call your attention to that particularly. In your previous testimony, Mr. Cedarstrom, you have referred to various

negotiations representing the Municipal Railway in Brooklyn and subsidiaries regarding prices to be allowed for these rights of way, etc. There is such a negotiation now pending concerning the route of that just mentioned? A. Yes, sir.

Q. Now, will you state so that the record may be clear, as clearly as you can, what ground is comprised in that route which you have mentioned as Route 49, Section 1, 1A and 2? A. Well, I think, so far as the real estate proposition is concerned, that we were having dealings with the B. R. T. for Section 1 and 1A. I don't think they run down as far as 2, although I think they are interested in property there, to a point at Tenth Avenue and Thirty-seventh Street, running south to West Street, and then across West Street into Gravesend Avenue.

Q. West Street is just beyond Fifteenth Avenue? A. Yes.

Q. So it is from Tenth Avenue to Fifteenth Avenue, and a little further on as far as West Street? A. The negotiations were pending beyond that point within the lines of Gravesend Avenue. No claim has been made by the B. R. T. for our negotiations for any compensation for any overhead.

Q. Well, let's don't go too far. The negotiation now is for right of way fifty feet wide extending, roughly, between the points you have mentioned, isn't that so? A. Yes, sir.

Q. And that fifty foot strip is occupied by a double-track railroad, isn't it? A. Surface railroad, upon which electric cars are operated.

Q. By which road? A. I don't know the different roads. I think there are several. The ownership is claimed by the Prospect Park & Coney Island Railroad; no Prospect Park & South Brooklyn Railroad Company. They claim the fee ownership of the land which we are to acquire over an elevated easement.

Q. And there are a number of different lines running over that, but you are dealing with that Prospect Park & South Brooklyn road? A. Yes, sir.

Q. And that is a subsidiary of the B. R. T.? A. I so understand it.

Senator Thompson.— That chart which shows the B. R. T. with its subsidiaries you have got it, haven't you, Mr. Moss?

Mr. Moss.— I haven't it here.

Q. (By Mr. Moss.) The center of that fifty-foot strip is approximately between the two double tracks, isn't it? A. I believe it is.

Q. And what is it that the Public Service Commission want in connection with that strip? A. Permit me to go into detail.

Q. I want that in general.

Senator Thompson.— Just before you get to that, is there in existence a map on these lines that shows on it the name of the company that owns the line? Is there such a thing?

Mr. Moss.— You mean a picture of the railroad blocked off with the ownerships? There should be one.

Mr. Yeomans.— I think we have, and I can get you a copy of it. It doesn't show any particular part of the lines.

Senator Thompson.— It shows the different companies. I saw one some time ago, and it seems they had a bill up with the legislature to require every card to carry out the name of the company that owned them.

Mr. Yeomans.— We have just such a map, showing the different lines.

Senator Thompson.— They didn't pass a bill because it turned out they had so many lines over there. I made the suggestion that they have a man with a pail of paint at the end of each line to change the maps as they went from one line to another, but they said there were so many lines that that wasn't practicable.

Q. (By Mr. Moss.) Well, you haven't spoken about an overhead easement that the Public Service Commission wants, what about that? A. It is an acquisition by the city.

Q. Don't say "acquisition by the city," what is it you want to do? What is it you want there up in the air; what do you want to do? A. We want an elevated railroad easement.

Q. You want to run an elevated railroad along that right of way, but not on the surface? A. Overhead easement.

Q. The surface would still belong to the railroad company and still be used by the railroad company? A. Yes, sir.

Q. For surface purposes? A. Yes, sir.

Q. So that when the operation is completed the trains of the subway, under the direction of the Public Service Commission would be running on the overhead track? A. Yes, sir.

Q. And the cars of the B. R. T. or its subsidiaries would be running on the street? A. Yes, sir.

Q. Not on the street; this property is within the building line and within fee ownership. On the street, I mean. A. Yes, sir, on the surface of the line.

Q. And does the plan which is being negotiated contemplate provision for the surface railroad for turn-outs and provisions that are necessary for the operation of the surface railroad? A. Yes, sir.

Q. Well, then, the easement that the city would take would be simply an easement up in the air which would not practically interfere with the use by the railroad company that owns the fee of the land that owns the fee of the land of the roadbed for the running of its cars? A. Yes, sir.

Q. Now, will you please tell us the history of the negotiations, state how they came about and your own relation to it, what was done and what reports were made? A. Here is a letter I have. Office of the Coroner, addressed to the Public Service Commission, signed by Alfred Craven, Chief Engineer, September 15, 1915, Route No. 49, Sections Nos. 1, 1A and 2.

“Gentlemen:— The construction of the Gravesend Avenue Line, Route 49, requires that easement be obtained along Thirty-seventh Street and Tenth Avenue north to Fort Hamilton Parkway and from Fort Hamilton Parkway to New Utrecht Road on Section 1, and also property at the northwest corner of Gravesend Avenue and Kings Highway on Section 2. The contracts for Section 1 and 2 of the above route have been executed and the contract for section 1A will be advertised shortly.

“In order to avoid delay in construction, the above easements and property must be acquired promptly.

“Post & McCord, the contractors for Section 1, have informed us that they desire to construct all the column foundations, including those on the South Brooklyn Railroad

Company property along Thirty-seventh Street, before Winter sets in.

"Prints of our drawings Nos. 8 to 11 inclusive, have been filed 3401, and drawing No. 56 file No. 3402, covering maps or plans showing the property rights required, have been handed to counsel and Mr. Cedarstrom. I would respectfully recommend that the necessary steps be taken to acquire these rights at the earliest possible moment.

(Signed) Alfred Craven,  
Chief Engineer.

Here is another communication. Office of the Corner, addressed copies of which were sent to George S. Coleman, Esq., Counsel; Alfred Craven, Esq., Chief Engineer, and Mr. Cedarstrom, department files, dated February 7, 1916.

"Dear Sir.— Herewith I transmit for your consideration and report copy of a communication dated February 3, 1916, addressed to the Chairman of the Commission from T. S. Williams, President of the Prospect Park and South Brooklyn Railroad Company, suggesting the agreement between the Commission and the Company upon an arbitration to determine the value of the easement desired by the Commission and that portion of the Company's right of way between Tenth Avenue and Gravesend Avenue, Brooklyn, required in connection with the construction of Route 49.

"Yours truly,

Secretary.

I will read a copy of the communication from the Prospect Park and South Brooklyn Railroad Company, 85 Clinton Street, Brooklyn, New York, Office of the President, February 3, 1916.

"Hon. Oscar S. Strauss, Chairman Pub. Ser. Com. for the First

"District, 154 Nassau Street,

"New York City.

"Dear Sir.—Your Commission has, as you know, laid out a route over a portion of the right of way of the Prospect Park & South Brooklyn Railroad Company between about Tenth Avenue and Gravesend Avenue in the Borough of Brooklyn,

lyn, and the Commission has let a contract for the construction of a Rapid Transit railroad thereover, expecting to acquire from the railroad an easement for such use. The use involves practically the entire right of way of the railroad company with provision for partial continued operation upon the surface of such right of way by the owning corporation subject to certain changes in the traction necessitated in order to permit of rapid transit construction and operation by the city or on its behalf.

“ The value of this easement and the amount of compensation to be paid therefor were taken up with the Commission last autumn. It was then informally agreed that your real estate expert, Mr. Cedarstrom, should consider the matter jointly with the Secretary of the Prospect Park & South Brooklyn Railroad Company, Mr. H. H. Bennington. These two gentlemen have been in conference on the subject repeatedly but there seems to be no prospect whatever of their getting together as to the reasonable values, Mr. Bennington's figures being in the neighborhood of \$200,000 and Mr. Cedarstrom's \$50,000, these amounts covering only the real estate proposed to be taken.

“ I happened to be the President both of the Prospect Park & South Brooklyn Railroad and of the New York Municipal Railroad Corporation, which latter corporation is interested by reason of its contract with the city in the operation of the rapid transit line.

“ My object has been to reach such an agreement between the city and the Prospect Park & South Brooklyn Railroad as would be equitable to both and to the city operators of the rapid transit line. Judging from our past experience, it will be impossible for us to name any figure representing the value of the easement which your real estate expert will approve. I would suggest, therefore, that the city either proceed by condemnation to acquire the necessary easement or that it agree with us upon an arbitrator who will determine upon the value of the easement merely from a real estate point of view, leaving the question of track adjustments, etc., to be taken up directly by the Commission engineers and ourselves.

“ The determination of the value of the easement from the



real estate point of view ought not to be difficult or prolonged. The objection to condemnation is not only the length of procedure and the expense involved, but the fact that it will involve consideration of tract adjustments, etc., both as to this right of way and collateral connection which can be more readily and satisfactorily determined as matters of give and take between the Commission and ourselves.

"If this idea of agreeing upon an arbitrator will determine the value of the easement purely from a real estate point of view is approved by you as sensible and practical we will be glad to take up with you the matter of selection of such an arbitrator.

"Very truly yours,  
" (Signed) T. S. WILLIAMS."

Senator Thompson.—What does he mean by "real estate point of view?" What does he mean by that? Are there any other kinds of points of view that you can arrive at the value of real estate through? A. Well, being a railroad proposition, I assume that there are some collateral issues like the connection between certain properties along the line turn-outs, etc., that might have a bearing, that might be interfered with.

Senator Thompson.—The real estate point of view would naturally contemplate everything that the real estate is used for? A. It should.

Senator Thompson.—It does, doesn't it? A. I tried very hard to do that in arriving at my conclusions.

Senator Thompson.—Any real estate man from a real estate point of view would consider that, wouldn't he? A. The best use of the land for ordinary purposes.

Q. (By Mr. Moss.) The letter that you just read spoke of the fact that the Public Service Commission had laid out a route upon this right of way? A. Yes, sir.

Senator Thompson.—There is a thing right here that I would like to understand, and that is this condemnation matter. The New York Municipal Railroad Company have to acquire this, don't they? A. The city acquires this, but we had our dealings

with the New York Municipal Railroad Corporation and through the secretary of the Prospect Park & South Brooklyn Railroad Company, being a subsidiary of the New York Municipal.

Senator Thompson.—The New York Municipal Railroad Company are going to operate the new easement when they get it, but the city acquires it? A. This is part of the subway construction.

Senator Thompson.—Is there any land over there that one railroad acquires from another in order to operate this contract? A. Well, we had a case of that kind where the New York Municipal acquired from their subsidiaries. They acquire the property and we pass upon it, and it goes into the determination.

Senator Thompson.—In that case the city has to pay it? A. In this the city does, but in the other the railroad pays it, the New York Municipal pays, and there is a charge of six per cent. against the construction account the same as the building of the elevated railroad line.

Senator Thompson.—The New York Municipal pays the condemnation but they get credit for the construction? A. Yes, sir.

Senator Thompson.—So that the city ultimately pays?

Q. They pay in a way, don't they? A. Well, only the interest charges on it, that's all.

Mr. Quackenbush.—The city don't pay except that it is taken out of the profits of the railroad. The Municipal Company pays the bill.

Senator Thompson.—Where does the railroad company get its money back? A. I don't understand they get the money back. I understand there is a charge of six per cent. against the construction account taken out of profits before the city participates in any profits.

Senator Thompson.—They get it back by being charged to construction? A. Well, I don't know. They advance the money and they allow six per cent. I know on the money advanced. The people who get the money is the subsidiary company.

Senator Thompson.—Then the New York Municipal pays the

money? A. That money that they pay for real estate necessary for the operation under the dual contract — that money with interest, is charged to the construction account.

Senator Thompson.— What about the principal? A. Well, that is the principal, the amount that they spent.

Senator Thompson.— That money, then, gets charged to construction? A. Yes, sir; the same as in the building of the elevated railroad.

Senator Thompson.— We know what happens to it then. In the condemnation proceeding does the city get represented? A. No.

Senator Thompson.— Not in the condemnation proceeding at all? A. I haven't known of any case of that kind.

Senator Thompson.— And the railroad of which Mr. Williams is President begins the condemnation proceedings against the other railroad of which Mr. Williams is President? A. That would be the ultimate outcome.

Mr. Quackenbush.— There has been such a case threatened.

Senator Thompson.— I suppose that is true in reference to that Coney Island matter. I guess that was threatened and I guess that is the reason the extra \$30,000 was paid — because they were afraid of a condemnation proceeding of that kind.

Mr. Moss.— That's the case down there, and that's the reason why Whitney and Tuner and Harkness, all subordinates of the Public Service Commission, made the Public Service Commission change its decision and redetermine, because of the threat of such a condemnation proceeding as that?

Mr. Quackenbush.— Because they thought it would cost more than otherwise.

Senator Thompson.— Because you had both sides of it — that's the way I understand. A. Well, we have another case now.

Senator Thompson.— All I want to do is to understand the thing, because if you can take a condemnation proceeding here by which the same railroad companies on both sides of the city do

not get represented, if that is possible, why perhaps we had better look into the code of civil procedure a little bit.

Mr. Quackenbush.—When that case came up, we would go to the Public Service Commission and they would select a counsel who would appear for the New York Municipal.

Mr. Yeomans.—It was such a case that the New York Municipal were going to condemn some profit of the other railroad companies. No lawyers connected with the present law department would take part in behalf of the New York Municipal, but a lawyer could probably be gotten outside who would be selected or approved by the Public Service Commission. Now, as far as this particular case is concerned, the city could take possession at once upon filing the condemnation. A. I think we have a similar case, the one that the Chairman was talking of in that Thirty-seventh Street and Seventh Avenue line. I gave figures of \$7,500 and your figures were something like \$12,200, as I recall it, and in that case I think you did ask for the appointment of a referee.

Mr. Yeomans.—I think so. A. But there isn't anything in the law that compels it.

Senator Thompson.—I would like to understand the law on that subject. A. This report that I have here was addressed to Travis H. Whitney, Esq., February 14, 1916; Route 49, Section 1, 1A and 2; Gravesend Avenue Elevated Line. The report is as follows:

“Dear Sir: Referring to the attached copy of a communication dated February 3, 1916, addressed to Chairman Straus, from Col. T. S. Williams, President of the Prospect Park & South Brooklyn Railroad Company, which you transmitted to me for consideration and report, I beg to state as follows:

“The subject matter relates to negotiations which, pursuant to your verbal instructions, I conducted with Mr. J. H. Bennington, Secretary of the Prospect Park & South Brooklyn Railroad Co., for the purchase and acquisition by the city of the necessary easement for the construction, operation and maintenance in perpetuity of an elevated railroad over certain private property located on the southerly side of 37th Street and 10th Avenue, Brooklyn, and running thence east-

erly a distance of about four-fifths of a mile to Gravesend Avenue, the surface of which is now used for railroad purposes, and intended so to be used in the future, the Prospect Park & South Brooklyn Railroad Co. claiming the ownership of the fee of the land.

" Referring to this matter, I have had a number of conferences with Mr. Bennington, with the result as stated in Col. Williams' letter — Mr. Bennington's figures being in the neighborhood of \$200,000, and my figures \$50,000.

" Mr. Bennington's actual figures are \$181,274.82 for real estate, and \$10,625 for an interlocking tower, signal tower, waiting room, cinder and wood platforms, making a total of \$191,899.82. I will suggest that the item of \$10,625 be referred to the Chief Engineer for a determination.

" Mr. Bennington's figures of \$181,274.82, and my figures of \$50,000 reflect our respective views from a real estate standpoint, as to the value of the easement as is proposed to be acquired by the city, and the sum that the city should pay and which the Prospect Park & South Brooklyn Railroad Co. should accept as the purchase price for the easement.

" The real estate of the Prospect Park & South Brooklyn Railroad Company which Mr. Bennington and I agreed upon as being affected by the taking over of the elevated railroad easement, as proposed by the city, is shown on a print attached hereto and marked ' Property of the Prospect Park & South Brooklyn Railroad Co. appraised for the elevated easement.'

" The city's assessed valuation of the real estate for purposes of taxation is \$105,100:

" Mr. Bennington's Valuation:

Real estate . . . . .	\$207,270.25
Elevated Railroad easement. . . . .	181,274.82

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Real estate subject to elevated railroad easement.	25,995.43
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" Cedarstrom's Valuation:

Real estate . . . . .	\$137,765.00
Elevated Railroad easement. . . . .	50,000.00

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Real estate subject to elevated railroad easement.	87,765.00
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“ In another part of this report I shall take up in detail the assessed valuation, Mr. Bennington's valuation, and my own valuation, as shown above.

“ At this point, however, I desire to state the following in regard to Mr. Bennington's valuation :

“ The specific purpose for which this real estate is being used is surface railroads, and in addition thereto, the fee ownership being in a Railroad Company, the land must therefore be considered from a real estate appraising standpoint, i. e., that railroad use is an ordinary use, and must therefore be appraised accordingly. This being a fact, together with the fact that the construction of the elevated railroad over this real estate is so planned by the Commission, at a considerable increased cost of construction, so as to create the least possible interference with the continued use of the surface for railroad purposes, as is plainly shown on a copy of a memorandum attached hereto, dated September 14, 1915, from Mr. Sverre Dahm, Principal Assistant Engineer, to me, which was prepared at my request as to provisions in the contract drawings for Route 49, Section 1, 1A and 2, which are to the advantage of the South Brooklyn Railroad Company, it is my opinion that, under such conditions, it is unreasonable to assume a real estate fee worth \$207,270.25 for surface railroad purposes, that after the construction of an elevated railroad, or the taking of an easement as is proposed, which does not destroy nor prohibit the continued use for a surface railroad, there is a diminution of value of the real estate, as is claimed by Mr. Bennington, of 87%, or \$181,274.82, and for surface railroad purposes thereafter, it is only worth 13% of the original fee value, or \$25,995.43.

“ I would respectfully call your attention to the following statement in Col. Williams' letter :

— “ ‘ judging from our past experience it will be impossible for us to name any figure representing the value of the easement which your Real Estate Expert will approve; I would suggest therefore that the city either proceed by condemnation to acquire the necessary easement, or it agree with us upon an arbitrator who will determine upon the value of the easement merely upon a real estate point of view, leaving

the question of tract adjustments, etc., to be taken up directly by the Commission's engineers and ourselves. The determination of the value of the easement from a real estate point of view ought not to be difficult or prolonged.'

" In reply, I desire to state that it has been my experience, without exception, that whenever it has become necessary for the city or the New York Municipal Railway Corporation to acquire by purchase, lease or otherwise, real estate for rapid transit purposes that was in the ownership or control of any of the subsidiary companies of the Brooklyn Rapid Transit, that the figures submitted to the city or figures that have had the approval of the New York Municipal Railway Corporation and forwarded to the Commission for its approval for purchase or lease, were found upon investigation did not represent what Col. Williams terms in his letter 'representing the value,' and which he also states in his letter the 'Real Estate Expert will not approve,' but on the contrary, the figures submitted have been excessive and, in some instances, exorbitant might be considered a mild term.

" I am of the opinion that the purchase price which the city is asked to pay for the easement from the Prospect Park & South Brooklyn Railroad Company, of which Col. Williams is the President, is out of all proportion to any figures representing the value.

"As an illustration of some of the figures which have been submitted to the Commission by subsidiary companies of the Brooklyn Rapid Transit as representing the value, and which have had the approval of the New York Municipal Railway Corporation, but failed to meet with my approval, I desire to call your attention to a copy of a report and recommendation made by me and attached hereto, dated November 13, 1914, relative to a lease for a term of five years covering the yard bounded by 37th & 39th Streets and 2d & 3d Avenues, and the right of way between Third & Fourth Avenues, Brooklyn.

" Briefly, the facts are as follows: The New York Municipal Railway Corporation submitted to the Commission a lease for approval in which it agreed to pay for a period of five years to the South Brooklyn Railway Company. a sub-

subsidiary company of the Brooklyn Rapid Transit, the sum of \$82,000 per annum, or a total rental of \$410,000. After a number of conferences with Mr. Bennington, Secretary of the South Brooklyn Railway Company, the figure of \$82,000 per annum was reduced to \$58,500 per annum for five years, or a total of \$292,500 rental, as against the sum of \$410,000 which was submitted as satisfactory to the New York Municipal Railway Corporation, making a total reduction of \$117,500 on this five-year lease.

"I desire further to call your attention to the following, viz.: The method and the basis used in arriving at the conclusions of value, remarks with reference to the value, also the city's assessed valuations, as well as other facts, and my conclusions on the matter as a whole.

"As I understand it, the method and the basis that was used by Mr. Bennington in arriving at his conclusion as to the amount that should be paid for the easement, and which I adopted, were as follows:

"1st. All the real estate affected by the easement in the ownership of the railroad should be appraised in fee.

"2d. In arriving at the fee value of the real estate, the fact was to be taken into consideration that the property was in use for railroad purposes with surface tracks and intended to be so used in the future.

"3d. That as a matter of fact the elevated railroad easement proposed to be taken did reduce the fee value of the real estate.

"4th. To estimate the relative per cent. value of the elevated railroad easement and the real estate in fee subject to the easement as proposed.

"5th. In arriving at the relative per cent. values of overhead and surface use the fact was to be taken into consideration that the construction of our proposed elevated railroad would not prevent a surface use for railroads.

"6th. That the fee value of the real estate multiplied by the per cent. value of the elevated railroad easement would be the reasonable compensation for the easement as proposed to be taken.

"For purposes of comparison of the figure arrived at by



Mr. Bennington and myself as to the fee value of the real estate, I will quote the city's assessed valuation for taxation. I may state that, to my mind, the city's assessed valuation as a whole for the fee of this real estate is reasonable.

"City assessed valuation \$105,100.00; Mr. Bennington's valuation \$207,270.25. About 97% or \$102,170.25 more than assessed value. Mr. Cedarstrom's valuation \$137,765.00. About 31% or \$32,685 more than assessed value.

"The following is the  
Estimated value of the real estate fee,  
Estimated value of the elevated railroad easement,  
Estimated value of the fee subject to the elevated railroad easement, called 'Remainder.'"

"Mr. Bennington:

Fee value \$207,270.25; easement value \$181,274.82. About 87% of fee value (72½% more than assessed value.)

"Mr. Cedarstrom:

Fee value \$137,765; easement value \$50,000. About 36¾% of fee value (52½% less than assessed value.)

Remainder \$87,665. About 63¼% of fee value.

"In making my computations of the fee value, which is \$137,565 (about 31% or \$32,665, more than the city's assessed valuation), I purposely gave the real estate value the benefit of every doubt, and it was with a view of reaching a settlement by purchase of the easement so as to avoid, if possible, a condemnation proceeding of this description, which may be made very technical in character as well as costly.

"Mr. Bennington's fee value is \$207,270.25 (97% or \$102,170.25 more than the city's assessed valuation). My judgment is, that it is not capable of being sustained with such facts as would ordinarily be considered as evidence of value. As a matter of fact, I recently purchased for the city a lot 20 x 100, located on Tenth Avenue, 50 feet south of 37th Street adjoining the property of the Prospect Park & South Brooklyn Railroad Company, which lot will be used in conjunction with its property for the elevated railroad easement. The purchase price was \$650, which is 18¾% less than the city's assessed valuation of \$800. The New York Municipal Railway Corporation paid for the property.

“Mr. Bennington estimates the value of the elevated railroad easement as being worth about 87% of the entire fee value or \$181,274.82 (72½% or \$76,174.82 more than the city's assessed valuation for the entire fee), and estimates that the fee value subject to the elevated railroad easement, the surface of which will continue to be used for railroads as being worth 13% of the fee value or a total of \$25,995.43, whereas it is his opinion that it was worth \$207,270.25 for surface railroad purposes prior to the taking of the elevated railroad easement. In other words, his basis is:

“100% value for the fee of the real estate unencumbered for railroad purposes, and the relative values for the fee subject to the easement and the elevated railroad easement, is,

13% for surface railroad use, fee, subject to the elevated railroad easement.

87% for overhead elevated railroad easement (city).

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Total . . . 100%

“Mr. Joseph P. Day appeared as a real estate expert before the Commission a few months ago, representing the Nassau Electric Railroad Company of which Mr. Bennington is the Secretary, and on a question as to the value of surface railroad easement, gave it as his opinion to the Commission that a surface right of way was worth 80% of the fee value of the land.

“I estimated the value of the fee prior to the taking of the railroad easements gave it as his opinion to the Commission the elevated railroad easement as being worth about 36¾% of the entire fee value or \$50,000 (52½% less than the city's assessed value for the entire fee), and I estimated the fee value subject to the elevated railroad easement for surface railroad use as worth about 63¼% of the fee value, or a total of \$87,765.00. In other words, my basis is:

“100% value for the fee of the real estate unencumbered for railroad purposes, and the relative values for the fee subject to the easement and the elevated railroad easement is:

63 $\frac{1}{4}$ % for surface railroad use, fee, subject to  
elevated railroad easement.

36 $\frac{3}{4}$ % for overhead elevated railroad easement  
(city).

---

Total....100%

“The Commission has recently closed a contract for the purchase of an elevated railroad easement for the construction of the Steinway Tunnel line crossing the Sunnyside Yard through the properties of the Long Island Railroad Co. and Pennsylvania Tunnel and Terminal Railroad Co. at Long Island City, and the basis used by Mr. F. A. Von Moschzisker, real estate appraiser for the Pennsylvania Railroad Co. was for the overhead easement 33 1-3% of the total fee value of the land affected. I recommended the acceptance of his figures.

“In conclusion, I wish to state that my estimate of \$50,000 as the purchase price from a real estate standpoint for the elevated railroad easement, is, in my judgment, a fair basis of settlement, and it should be accepted by Col. T. S. Williams as being equitable to the Prospect Park & South Brooklyn Railroad Co., and the city as well as the city operator of the rapid transit line, the New York Municipal Railway Corporation.

“Very truly yours,

“(Signed) CEDARSTROM,

“Real Estate Expert.”

Q. (Mr. Moss.) How long, judging by experience, would a condemnation proceeding take? A. One that I know of took eight years.

Mr. Yeomans.—The city at once took possession you understand, Mr. Moss, on a condemnation proceeding. As soon as the condemnation is begun, construction commences and the city goes right on.

Senator Thompson (to Mr. Yeomans).—Is there any question you wish either of the witness or the counsel or the chairman?

Mr. Moss.—That is really the reason for inviting you gentlemen here this morning was to get you to do that very thing. A. Here is the accompanying memorandum from my report, dated September 14, 1915:

“ Re: Provisions made to the advantage of the So. Bklyn. Rway. Co. in the contract drawings for Route 49, Sections 1, 1A and 2.

“As requested by you, I am furnishing herewith the following statement as to provisions made in the contract drawing for Route 49, Sections 1-A, 1 and 2, which are to the advantage of the South Brooklyn Railway Company.

“ 1. A wider subway structure than is necessary for immediate use, to accommodate two future tracks of the above company for a length of 180 feet, Section 1-A.

“ 2. Installation of telephone and signal ducts for the use of the above company in the structure of Section 1-A.

“ 3. A drainage system and pumping chamber in open cut and subway portion to drain the So. Bklyn. Rway. tracks from 8th Avenue to Fort Hamilton Parkway. The future maintenance of the pumping chamber to be taken care of by the city.

“ 4. A better track and road bed than the existing, due to firmer foundations and provision for drainage in subway and open cut.

“ 5. A fence from 9th Avenue to Fort Hamilton Parkway along the north side of the structure and from 10th Avenue to Fort Hamilton Parkway along the south side.

“ 6. A trolley trough attached to the ceiling in the subway and to the steel structure in the elevated portion, which eliminates the trolley poles and their maintenance.

“ 7. Removing the siding from the street between 13th Avenue and New Utrecht Road from the north to their property on the south side of the structure, and the rebuilding of turnouts.

“ 8. Spacing of columns laterally to accommodate surface tracks, as requested by the company. Long spans in every block to allow for future turnouts.

“ 9. Head room clearance from top of rail increased from

our standard of 14 feet to 14 feet 6 inches in the subway and 15 feet minimum under elevated structure, at the request of the So. Bklyn. Rway. Co.

" 10. Depression of So. Bklyn. Rway. tracks from 9th Avenue to Fort Hamilton Parkway, the cost of which would be saved in case the city should order elimination of street crossings.

"All the above provisions increased the cost of the construction of the above route. The cost of the structure from 10th Avenue to Fort Hamilton Parkway as per contract drawings is approximately \$175,000. The cost of an elevated structure for same would be approximately \$44,000.

" (Signed) SVERRE DAHM,

" Prin. Ass't Engineer.

Q. (By Mr. Moss.) Now wait a minute, let's understand about this — Mr. Dahm made this memorandum for you at your request?

A. Yes, sir.

Q. And what was the purpose of this memorandum? A. So that I might have a knowledge as to what we had done in order to prevent the use of the surface of this land for ordinary railroad purposes. Just what benefits we give we wouldn't ordinarily have to give on constructing this elevated railroad easement or their property.

Q. Well, this memorandum indicates that in the contract drawings there were unusual privileges reserved to the South Brooklyn Railway Company? A. Yes, sir.

Q. And these are privileges which would enhance the ordinary value of the surface railway company? A. I would hardly say that. That would tend to minimize the damage.

Q. Well that amounts to the same thing. And did you consider these items of substantial importance? A. I did, yes, sir.

Q. Do you know of any case where similar provisions were made for the benefit of the surface railroad? A. I do not. It hasn't come to my knowledge.

Q. Well, proceed. A. The status of this transaction at present is that the Public Service Commission have now in course of preparation condemnation maps accompanying the data for the purpose of vesting title to condemnation and trying out the cases.

Q. Well, they are practically forced into that position by the failure of an agreement between your figures and the figures proposed by the railroad company, is that so? A. Yes, sir.

Q. What is the disadvantage of a condemnation proceeding? Speak of it practically now. A. Well, I refer right to Col. Williams' letter here. Col. Williams states, and I agree with him in his statements:

“ The objection to condemnation is not only the length of procedure and the expense involved, but the fact that it would involve adjustments, etc., both as to right of way and collateral connections, which can be more readily and satisfactorily determined as a matter of give and take between the Commission and ourselves.”

Q. This is not the only block to the 5 cent fare, is it? A. Really I can't answer that.

Q. Well, I don't believe it is.

Senator Thompson.— Well, I am perfectly willing to criticize the B. R. T. for whatever they deserve, and probably they deserve more than we can find that they do deserve, but this matter here, the question of acquiring this real estate does look to me that it is up to the Public Service Commission.

I have tried one or two cases myself — condemnation cases — and I really think they would have put that through long before this if they had went at it with a sledge to do it. A. The Public Service Commission was conducted by the Corporation Counsel. I don't believe that there is any delay on construction on account of this. I think the Public Service Commission has been in hopes; in fact, I personally have, that we would reach some settlement on it. I haven't been able to secure any data from the South Brooklyn Railroad Company which would either tend to show the reasons of their demands nor —

Mr. Moss.— Under that question of the difference in the estimates of the railroad company on the one side and the Public Service Commission on the other side?

Senator Thompson.— Well, when I first came down here — that was a year ago in January — Judge McCall, who was then head

of the Public Service Commission, took me for a ride over in Brooklyn and showed me this situation, and said that within a couple of months you would be able to begin up in the Bronx and ride to Coney Island for five cents. That has been overshot by years.

Mr. Moss.— I might ask if Col. Williams knows anything about this matter — when is it coming? What does the Colonel say? Is the five cent fare likely to come?

Col. Williams.— I can't answer that question, you will have to ask the Public Service Commission. The five cent fare is fixed to go into effect at a certain day under the terms of the contract.

Mr. Moss.— Not a certain date, but on certain events.

Col. Williams.— Upon the accomplishment of certain construction. One line that is to be constructed is the so-called Culver Line. It is now under process of construction. It would seem from the letters that Mr. Cedarstrom has read here that the Commission took no steps until September 5, last, to acquire titles to about a mile of route which they had to have before they could let a contract. And the contract covering the five cent fare provision had been in effect since March 19, 1913. That, if I calculated correctly was about two and a half years before they began to take any steps to acquire the right of way. In addition to that there was at the beginning some question whether the city could legally lay out a rapid transit route over the Prospect Park & Coney Island right of way on Gravesend Avenue. The stock of the Prospect Park & Coney Island Railroad was owned by the Long Island Railroad Company. One of our companies leased that company for 999 years. Long Island took the position that the city had no right to put a rival railroad right over its own right of way which had been condemned for public use, and fought the attempt of the city to construct such a railroad. The Commission came to us and asked what our attitude would be. We said: "We are the lessees of this railroad for 999 years. We think that the visionary, contingent, remote interest of the Long Island is so dim that —."

Senator Thompson.— This Committee is not going to remain in session as long as that.

Col. Williams.—But they haven't any real interest there — opposing it. What the Long Island really wants us to do is to buy the stock of the Prospect Park & Coney Island. That was indicated by letters from the Long Island. We didn't see our way clear to buy the stock and repeatedly during two years the Long Island besought us to buy that stock, and meanwhile the Public Service Commission hadn't been able to get its legal right of way legalized on account of this proposition. They had to go to court, and finally they decided in their favor and they got the consent of the Commissioners in lieu of the consent of the Long Island Railroad Company. But finally, in order not to delay the building of that road, one of our companies contracted to buy stock of the Prospect Park & Coney Island Railroad Company, so that so far as our attitude is concerned, we have promoted the interests of the city. We haven't yet bought that road, the Long Island hasn't been able to deliver it, but we are under contract to buy it.

As to this particular situation, which affects not the route on Gravesend Avenue, but on this spur between the Tenth Avenue and Gravesend Avenue line which was owned by another company, the Prospect Park & South Brooklyn Railroad Company, why it is quite evident at the beginning, and it has been evident on every real estate transaction that we have had up with the Public Service Commission since Mr. Cedarstrom has been there, that it is absolutely impossible for us to agree with Mr. Cedarstrom on anything that is reasonable and fair, and the reason for it, I think, was stated very frankly by Mr. Cedarstrom to me once. He said: "I want to make my services so valuable there to the Public Service Commission that your corporation or some other will pay me \$20,000 a year to leave it." We haven't seen our way clear yet to make any such proposition of that kind. We never can agree with him, and the result is that he is costing the city hundreds and hundreds of thousand of dollars by the attitude that he is taking on matters affecting the purchase of real estate by the city, and he is so prejudiced against our corporation that any kind of a price that we put upon any property whatever is sure to meet his objection in advance.

Mr. Moss.— Well, now, wait a minute, Mr. Williams, will you



stand upon that allegation upon the figures that have been proposed by you as against the figures proposed by Mr. Cedarstrom for this right of way?

Col. Williams.— We haven't proposed any figures whatever.

Q. (By Mr. Moss.) Haven't you been in negotiation and haven't figures been proposed by Mr. Bennington for your company?

Col. Williams.— Mr. Bennington, as a secretary of this company, took up informally with Mr. Cedarstrom, at my suggestion to the Commission, the question of value, and whether Mr. Bennington is right in the figures that he has presented, I don't know. But the company itself has never affixed its signature or taken a position as to any of the figures.

Q. Have you known the figures that Mr. Bennington has submitted? A. I have in a general way.

Q. Well, have you objected to his figures? A. I have not. I presume they were too low.

Q. Why were they proposed then? A. Well, we proposed a great many figures.

Q. Didn't you propose figures that were too low in order to force the Public Service Commission into a condemnation proceeding? A. No.

Q. Well, you say that Mr. Cedarstrom's figures are too high and your figures are too low; you presume they may be too low? A. I think they are entirely too low.

Senator Thompson.— I think you agreed with Mr. Cedarstrom that his figures in at least one case were proper from a real estate point of view, isn't that true?

Col. Williams.— I think we did once on a matter affecting — Senator Thompson.— Well, don't you most always agree?

Col. Williams.— When he gets at it from a real estate point of view.

Senator Thompson.— Well, don't you most always make your claims from some other point of view in addition?

Col. Williams.— Why here's a railroad operating and the city proposes to come in and build a railroad over that right of way;

naturally we tried to get all that we were entitled to for easement which the city was to take, and because I anticipated that this constant and continual difficulty in agreeing with the Commission's expert, Real Estate Expert, so-called, would cause trouble, I suggested in a letter which Mr. Cedarstrom has read that the Commission and ourselves agree upon an arbitrator who would determine the value of the real estate; but as to the other questions involved which were purely engineering questions, matters of turn-outs, etc., why those were practical engineering questions which I didn't think we would have any difficulty in agreeing with their engineers on. But as to the real estate, there seems to be something in the word "real estate" that suggests difficulties, and I was quite sure we couldn't agree with their expert.

Senator Thompson.— This is rather a serious thing you say about Mr. Cedarstrom.

Mr. Moss.— Haven't you found situation, Mr. Williams, where one of your costs was dealing with another of your costs and practically agreeing upon the price which would be given in the one instance and paid in the other, which would have gone through but for the interference of Mr. Cedarstrom?

Col. Williams.— Well, that might have gone through. If it had, it would have gone through properly.

Mr. Moss.— Well, he stopped it, didn't he?

Col. Williams.— He stopped the whole process of construction.

Mr. Moss.— Well, here you were Mr. Williams, you President of the B. R. T., you President of the South Brooklyn Railroad, you President of one railroad agreeing with yourself as President of another railroad to give a certain price for a certain thing which would go through unless Mr. Cedarstrom, the expert of the Public Service Commission, intervened, and he did intervene, didn't he?

Col. Williams.— No figure of that kind could have gone through without the consent and approval of the Public Service Commission. Every contract had to be submitted in advance to the Public Service Commission?

Mr. Moss.— Well, it failed when its expert was against you?  
A. Yes, but nevertheless the city had full control of the matter. The price was unreasonable. Why, of course, the city objected to it.

Q. (By Mr. Moss.) Why there have been cases of condemnation where the city practically wasn't represented; there have been cases of dealings between your corporations.

Senator Thompson.— Well, we have got to suspend in a few minutes for lunch, but I just want to call attention to this: I got quite interested in the Brighton By The Sea proposition. That was personally in my capacity as a Senator. I examined into that affair a little bit and I found that Mr. Cedarstrom resigned from the Commission at that time. Now, that don't look to me as though he were looking for an opportunity to go to work for you. He resigned and they hired him back.

Mr. Moss.— I think before recess that you should let Mr. Cedarstrom say what he has to say in regard to this rather ugly accusation.

Mr. Cedarstrom.— In the first place, I never recall making any such statement as Col. Williams has attributed to me, and I can't conceive how I would make them. In the first place, when I quit my present position I quit public life for good so far as any railroad is concerned, and your company especially. It would be the last thing in the world that I would think of being connected with. I haven't had a proposition submitted from your company since I have been in the Public Service Commission that could be considered in the remotest aspect as being reasonable or consistent with what should be done. The contrary has been true in every proposition that you have submitted. Now I tell you what I am ready to do. I am ready to sit here and permit you to cross-examine me on everything you please, go into detail, and I will guarantee to prove that every proposition you have made from your subsidiary company is unreasonable. I will quote you in Point 1 on the acquisition of the cuts of the 38th Street cut where the Commission allowed you \$150,000. I recommended \$50,000. I will read that from the minutes of that testimony:

Col. Williams.—As a matter of fact, you didn't pay us \$150,000 for that land.

Mr. Cedarstrom.—I am going to read what you objected to.

Senator Thompson.—You made an accusation against this man that is very serious. We are going to allow Mr. Cedarstrom the privilege of making a statement. Go ahead and make your statement.

Mr. Cedarstrom.—Here is something I want to read on Page 9 of the minutes:

“Chairman McCall.—Supposing we do not give them \$30,000. If we acquire by condemnation they could get what the reasonable fee value is.

“Mr. Cedarstrom.—Yes, in addition to this property there is another fact to be taken into consideration, that is that they give us an easement for temporary operation. And it will be necessary to acquire this property for that purpose. So it is not only this proposition—the real estate—but there is the easement from a purely real estate standpoint. The highest figure would be about \$50,000.

“Mr. Yeomans.—We all agree to that.

“Mr. Cedarstrom.—I simply call you attention to that from a real estate standpoint, that is all.

“Chairman McCall.—This would not be the first instance where the city had to pay a better price. Suppose we reject that proposition and go on constructing this railroad along the original line. It would cost us \$80,000 more in the end. I am in favor of buying it.”

Now, does that mean that your company doesn't consider that my recommendations on real estate are all right? This is a copy of the minutes taken on April 30.

I will read this on Page 8:

“Mr. Hughes.—It is agreeable if we can save \$150,000.

“Mr. Cedarstrom.—From a real estate standpoint I am unable to sustain \$150,000 for this property, including the 20,000 feet. I suppose I might be able to sustain it taking it from an engineering and real estate standpoint in construc-

tion however, purely from a real estate standpoint I cannot sustain it. There is a saving in the cost of construction of \$200,000 and from that standpoint it might be sustained, but from a real estate standpoint I do not think I could sustain over \$50,000 for that property.

"Mr. Menden.—Mr. Cedarstrom is right about that. You have to buy all of that or you cannot carry out this scheme.

"Mr. Cedarstrom.—Here is some property worth about \$3,000 and they are asking \$30,000 and it will be necessary to acquire that," etc., etc.

The point I am getting at is this: that in that proposition of yours for the acquisition of that \$150,000 easement, I will call your attention to your original proposition on that, which was from the Transit Development Company that we should acquire such easement for a sloping bank as was necessary to avoid the construction of a concrete wall at that point for so long a period as we required; just simply an easement. I called attention to the fact that you had probably graded your yard below the present grade. It was then established that if we paid you the cost of the sloping bank it ought to be compensation enough, but when you graded your yard we no longer had any necessity for that sloping bank, the fee could revert to you and the city would have nothing, and that if we bought anything we should buy the fee. We finally did acquire the fee. Now, it was acknowledged through this testimony that you paid three times the value of that property. There isn't any question about that at all. We finally got the fee. You sold other strips of railroad land on the same basis and analyzation will show that you received more for that than you paid in proportion for the property there.

I don't see how you could possibly sustain any charge that you have made, and I want you to do it. If what you say is so I have no business to be Public Service Commission Expert. You should bring charges. I want you to. And I want you to sustain them. I insist upon your doing it. Now, go to it.

Mr. Moss.—Mr. Cedarstorm, have you found cases in your experience where one Brooklyn Rapid Transit subsidiary was dealing with perhaps the Brooklyn Rapid Transit or the Municipal, where they had substantially agreed upon prices to be paid, prices

to be taken, in excess of real and honest values, and standing against those things, has it been you who has blocked them? A. Yes. I want to read a report.

Mr. Moss.—Wait a minute. If Col. Williams can assassinate you here he can prevent the difficulties which might occur in the future. As you say, the difficulties which have occurred in the past occur in the future by which the dealings between these interlocked companies shall be interfered with by the Public Service Commission? A. I wouldn't say that, because I know there are men just as competent.

Q. (By Mr. Moss.—Well, there has to be somebody to do it. A. I desire to read a report here. I am answering Col. Williams. I want to read a report dated November 13; 1914, addressed to Travers H. Whitney, Esq., as follows:

“Dear Sir: Referring to a copy of proposed lease dated August 15, 1914, between the New York Municipal Railroad Corporation and the South Brooklyn Railway Company, covering the yard bounded by 37th Street and Third Avenue and the right of way between Third and Fourth Avenues which was referred to me by your Inspector of Property in his report as the rental value.

“I have examined the property and the terms of the lease briefly signify that the term is for five years, with the New York Municipal Railway Corporation, the lessee, to pay \$82,000 per annum, and the South Brooklyn Railway Company, the lessor, reserving for its use a part of the property.

“I am of the opinion that the rental as submitted is not reasonable. I took up the question of rental with Mr. Bennington of the South Brooklyn Railroad Company, with the result that he agreed to recommend a rental of \$58,500 per annum for a term of five years, which, in my judgment, is a fair basis of rental. Mr. Bennington 'phoned me this morning to the effect that the South Brooklyn Railroad Company would accept the figures of \$58,500 per annum for the term of five years providing the South Brooklyn Railway Company received the approval of same from the Public Service Commission. I desire to call your attention to the fact that the \$58,500 per annum is divided into two parts; namely, \$25,-

000 per annum for the land and \$33,500 per annum for the buildings, track overhead, work machinery and other improvements now on the premises. The latter figure of \$33,500 has received the approval of the Engineering department of this Commission as a fair basis of rental. Mr. Bennington has also agreed that this sub situation is proper.

"Attached hereto is a communication from Mr. Bennington, Secretary to the South Brooklyn Railway Company, dated November 13, 1914, accepting the figure of \$58,500 per annum and transmitting two copies of the proposed lease with the new figures of \$58,500 in place of the original figures of \$82,000 per annum."

In most of the transactions where the Commission has allowed a greater sum than I have approved, some other elements have been brought in. For instance, the Brighton By the Sea that I approved \$100,000 on, they wanted \$110,000 on. The Commission was faced with the alternative of going into condemnation and condemning a right of way there or else agreeing to an exorbitant figure and the division of property there that would greatly enure to the benefit of the New York Consolidated Railroad, who were also interested in this proposition as a whole. I would like very much, Mr. Chairman, to take up in detail, in view of the accusation made by Col. Williams, each real estate transaction.

Mr. Moss.—We will have to do that. A. Each real estate transaction that has been before the Commission that I have passed on, and if Col. Williams is right I will resign at once and I will never appraise another piece of property for anybody.

Mr. Moss.—I would like to ask Col. Williams where did this conversation occur that you had with Mr. Cedarstrom?

Col. Williams.—Probably in the Public Service Commission office.

Q. (By Mr. Moss.) When was it? A. (By Mr. Cedarstrom.) Sometime during the last two or three years.

Q. (To Col. Williams by Mr. Moss.) Come as close to it as you can. Was it as much as a year ago?

Col. Williams.— I recollect it was somewhere in the neighborhood of a year and a half ago.

Q. Was there any particular matter by which you could locate the time?

Col. Williams.— It was one of these numerous controversies over real estate.

Q. If you can associate it with something that was under discussion at that time we may be able to fix the time.

Col. Williams.— Do you remember, Mr. Bennington? I think it was the easement on the west end.

Mr. Moss.— Don't ask him, please. Was judgment called there? Was it made loud so that Judge McCall or anybody else could hear it?

Col. Williams.— I think it was in a conversational tone.

Mr. Moss.— Did you make any charge against Mr. Cedarstrom?  
A. (By Col. Williams.) No.

Mr. Moss.— Did you lay it before the Commissioners? Did Mr. Cedarstrom make objections, or at least interfere with the way that you suggested after that time? A. No.

Mr. Moss.— Why didn't you make charges against him? A. I didn't see any particular reason for making charges against him.

Mr. Moss.— Wasn't there a suggestion that you employ him?  
A. Well, I never took such a suggestion very seriously. I told him I would want to be paid \$20,000 a year to hire him.

Mr. Moss.— It was a suggestion that you should employ him, wasn't it? A. Well, I constructed it in some such general way.

Q. (By Mr. Moss.) It was something like bribery and something like extortion, wasn't it? A. Well, it depends on the point of view. Some people don't look at those things in the same manner.

Q. Did you look upon it in a serious manner? A. I certainly did.

Q. Then why didn't you make a charge against him? A. I didn't see any particular reason for doing so.



Q. He was interfering with your business right along, why didn't you make a charge against him? A. We always wrote an arbitration on the contract.

Q. Were any of your figures refused upon his objection after that event? A. I think they were all refused.

Q. Well, then, you had a financial reason for putting him out of the way, why didn't you do it? Did Judge McCall put him on trial? A. I don't know.

Q. Did they raise his pay afterwards? A. I think they did.

Q. And after he resigned they begged him to come back and raised his pay. Did you have a talk with Judge McCall who seems to have been present at this time about removing him from his position? A. No, but I expressed my opinion frankly in Mr. Cedarstrom's presence before the Commissioners.

Q. I am speaking about this definite charge that you have made. Why didn't you say to Judge McCall that such a man ought to be put out of his place? A. There was no reason for doing so.

Q. No reason why you should get Mr. Cedarstrom in trouble? A. No.

Q. Well, why not? You were a business man representing the interest of the railroads committed to your care. Mr. Cedarstrom was attacking them and costing the city hundreds of thousands of dollars, you have said. Why didn't you go right at him and drive him out? You had a witness, Mr. Bennington. Will you make charges now, Mr. Williams? A. I don't see any reason for it.

Q. Will you call upon the Public Service Commission to throw out a dishonorable expert? Will you do it? Mr. Cedarstrom invites you to do it. Will you do it? A. I haven't said that he was a dishonorable expert.

Q. I think you have.

Mr. Cedarstrom.—More than that.

Q. Are you bluffing, Mr. Williams?

Senator Thompson.—The charge has been made. We are going to take it up.

Mr. Cedarstrom.—May I ask Col. Williams a question?

Senator Thompson.—You were given the privilege to ask any questions.

Col. Williams.— I want him to ask what he wants to. You know that any figures that are made have to be submitted to the Public Service Commission and approved by them, don't they?

Mr. Cedarstrom.— Absolutely.

Mr. Yeomans.— So that no agreement could be made between two or three of these subsidiary companies at all.

Mr. Moss.— They agreed?

Mr. Yeomans.— They don't agree at all. It has to be submitted to the Public Service Commission and they have to agree to those figures.

Mr. Cedarstrom.— But when it comes to us, in the New York Municipal, it is with the recommendation that the figure is reasonable and all right.

Mr. Yeomans.— That is the standpoint of the company.

Mr. Cedarstrom.— It comes to us with a recommendation.

Mr. Yeomans.— It may come that way.

Mr. Cedarstrom.— On this where you had a saving of over \$500,000 on a lease.

Mr. Yeomans.— In this \$150,000 deal that you are talking about you know perfectly well that every one of your experts, your engineers, your lawyers, every person and even the Commission itself said that outside of this being continued from a purely real estate standpoint the figure wasn't excessive, don't you? Isn't that true?

Mr. Cedarstrom.— I don't say so as a whole, no.

Mr. Yeomans.— Didn't every one of your Experts—didn't your lawyers; didn't everybody but you say that it was a saving of from \$100,000 to \$200,000, and a good deal.

Mr. Cedarstrom.— No.

Senator Thompson.— I want to say this: That I can't conceive how in the world it is that you can Convince a Public Service Commission of the public that because you go out and buy a piece

of real estate that saves a couple of hundred thousand dollars for constructing a wall that you won't thereby construct, that you are entitled to a half, or the whole, or any portion of the saving that is obtained thereby. I can't get that through my head.

Mr. Cedarstrom.— I can't either.

Senator Thompson.— I wish you gentlemen this afternoon would do it for me.

Mr. Moss.— Mr. Williams, I am going to let you take up this matter with Mr. Cedarstrom later, but I want to know how it is that you are entitled to everything that the City saves, and we will take that up after lunch.

Col. Williams.— We will take that up this afternoon. This particular \$150,000 contract—transaction, was no money in our pocket whatever. We were constructing on behalf of the City this 38th Street cut and your engineers came to us and said that by getting this additional land for a slope at a cost of whatever it might be in the neighborhood of \$300,000 in construction cost would be saved. I asked what it would cost: "Well, we don't know." I put our real estate man at it. Not being able to wait for the prolonged controversies to be over with the Public Service Commission I said: "Go out and buy it," and I knew we paid more than it was worth as real estate, but it was worth a great deal more than he did pay to the contractor of that enterprise and the City got all the benefit from it.

Senator Thompson.— Why weren't they entitled to it?

Col. Williams. - We were the ones that got stuck. Our people paid these prices, and they got back from the city less than they paid. They get a lot of useless land there which has cost them considerable money, so they are out of pocket by the attitude which I erable money, so they are out of pocket by the attitude which I took in the interest of the City to save the City's money.

Senator Thompson.— Well, we will adjourn now till the afternoon meeting.

(Suspension.)

## AFTERNOON SESSION.

The meeting was called to order at 3:00 P. M., Senator Thompson presiding.

Mr. Harkness.— Before you proceed I would like to say a word. I am very much interested in the statement that was made here this morning, if there is any truth in such a statement; on the other hand, if such a statement was made erroneously it should not be supported. And I may say that the impression made upon me by what I heard this morning is that it is rather surprising that such a serious statement could be made and not followed up by a charge. If there is any basis for that statement it seems to us that it ought to be put in the form of a charge and thoroughly investigated. If there is any truth at all in the statement it ought to be thoroughly investigated by all means.

Mr. Cedarstrom.— That is practically what I have demanded of Col. Williams, and I demand it now. And also I have suggested and requested that the Committee here take up each real estate proposition separately and go into it and see if there is any basis for any of the charges that Col. Williams has made. If there is any basis for them, I am not fit for the position I hold and I will immediately resign.

Mr. Moss.— I think Mr. Harkness should know that the matter occurred sometime within the last two or three years, and no charges have ever been made.

Testimony of MR. CEDARSTROM.

Cross-examination by Mr. Moss:

Q. Mr. Cedarstrom, I think you were asking Col. Williams a question at the time that we adjourned. A. I would like to ask a question of him now. Was there any time before my connection with the Public Service Commission that I ever requested you or any one in your company to give me any sort of employment in any capacity whatsoever in appraising or otherwise?

Col. Williams.— I never heard of it. A. I want to state for the information of the Committee that I have been a resident of Brooklyn for forty-four years. I have been actively engaged in appraising real estate for twenty-five years. I have been located the greater part of that period down-town. My business is appraising real estate. If I had any object in connecting myself with a railroad corporation in an appraising capacity, I certainly would have made application. I never have made any such application for any such employment directly or indirectly; but for Col. Williams' information I will state this, and at the same time I think I will correct your records. I think I made an erroneous statement once before. I was employed in a sort of expert capacity about June, 1913. About a couple of weeks later one of the B. R. T. representatives visited my office and—

Q. Who was the gentleman? A. Mr. Hunter. He said that I was good enough for the Public Service Commission I was good enough to appraise property for the B. R. T. and would I consider doing some work for the B. R. T.? I told them that no man could serve two masters. He said he couldn't see where that came in, that I was just doing ordinary work for them. Now, Col. Williams, that's the nearest that I remember of ever being employed by your company.

Q. You refused. A. Absolutely!

Senator Thompson.— Who is Mr. Hunter? A. He is the man who acquires real estate for the different subsidiary companies of the B. R. T.

Mr. Yeomans.— Did Mr. Hunter tell you on what property he wanted you to make an appraisement? A. He did not. He didn't have any specific property in view. I only know that he suggested my doing work for you, saying that if I was good enough for the Public Service Commission I was good enough to do work for your people.

Mr. Moss.— Did he employ real estate men so that they gave opinions in your matters which were given in court?

Mr. Yeomans.— Mr. Bennington had charge of the real estate. A. I am simply testifying to the facts.

Senator Thompson.— The question would be whether or not he had the authority to make suggestions of that kind to a public officer. A. I was only retained on special work.

Mr. Moss.— Well, at that time you were not regularly employed by the Public Service Commission? A. Only on such work as they assigned to me, and I was paid for piece-work.

Now, I would like to correct the records. I think your records say that I was under the employ of the Public Service Commission in December 1914. As a matter of fact, it was December, 1913, and my temporary employment was around June, 1913, permanent to December.

Q. (By Mr. Moss.) I would like to have you at this point show to the Chairman, Senator Thompson, your map of this property and show him by blocks the figures; first, the city assessed value, then Mr. Bennington's values, as stated to you, of the fee and also of the easement, and then the value which you arrived at for the whole and then for the easement. Will you take block 5289? A. Block 5289, between Tenth Avenue and Fort Hamilton Avenue, the city assessed valuation of the part that is owned by the railroad and fee without considering any of the improvements on land is \$19,100. Mr. Bennington's valuation is \$34,034.00.

Q. Now give your valuation of the fee? A. \$20,565.00.

Q. So that your valuation of that block was slightly in excess of the city's assessed value? A. Yes.

Q. Now, what valuation did Mr. Bennington give for the easement? A. \$34,034.00.

Q. In other words, he gave for the value of the easement the whole amount of the fee of the land? A. Well, at that point as the plans were consummated, there was to be a sort of subway structure built underneath, so that it was not a surface; it was sort of a sub-surface, that they retained for the operation of their surface line, and he claimed after that was put in that there was the surface easement, although they had access to all of the other properties, that there was no remainder of the total diminution of valuation, so that he valued the easement at \$34,034.00.

Q. What did you value the easement at? A. Practically fifty per cent. diminution for that block.

Q. Now, we will take block 5291. What was the city's assessed value? A. \$14,500.

Q. What was Mr. Bennington's estimate of the value? A. \$22,979.

Q. What was your estimate of the fee value? A. \$17,275.00.

Q. What was Mr. Bennington's easement value? A. \$19,532.15.

Q. And your valuation of the easement? A. \$5,758.33.

Q. Was that approximately one-third of your valuation of the fee? A. Yes.

Q. Did you adopt that as a principal, one-third of the fee? A. Yes, sir, all along the line, with the exception of one block.

Q. Did any one agree with you—is there any authority for that? A. In my report, as I quoted this morning, Mr. Joseph P. Day, one of the representatives of the B. R. T., said the surface easement was worth eighty per cent. of the fee, that would leave twenty per cent for the overhead easement.

Q. Only twenty per cent. instead of thirty-three and a third? A. The valuation of property at Long Island City, Long Island Railroad, as stated in the report there, I closed the deal with the Pennsylvania Railroad. Bonschist was their expert appraiser. He adopted the method of one-third of the overhead easement so that I closed that and I had those two in mind and my own general knowledge.

Q. As between those two experts you took the most favorable to the local conditions? A. I did, yes.

Q. That agreed with your own judgment? A. My own judgment? A. My own judgment is that one-third, under these conditions, is reasonable.

Q. And I noticed that your valuation fee was nearly \$3,000 larger than the City's assessed value? A. Yes, sir.

Q. May I ask you this general question? In your opinion how does the City's assessed valuation in this section of the city compare with the real value? A. I think it is about ten per cent. high on the sales that have been made. In other words, it is ten per cent. higher than it would be ordinarily assessed at.

Q. You mean to say the City's assessed value was higher. A.

It was 105 per cent. of its real value in my opinion, and it should be 100 per cent.

Q. Well, if that is so, then your allowance of fee value was liberal? A. Yes, sir. I so stated in my report that I read this morning that I gave the land the benefit of every doubt, in my opinion, to avoid condemnation proceedings. They could not be attacked from any standpoint.

Q. Well, now, block 5295. Give the City's assessed value? A. That is \$17,500.

Q. Your fee valuation? A. \$21,850.

Q. Mr. Bennington's easement valuation? A. \$27,981.56.

Q. Your easement valuation? A. \$7,283.33.

Q. Now, we will take block 5300. A. Between Thirteenth and Fourteenth Avenues.

Q. City's assessed valuation? A. \$15,000.

Q. Bennington's fee valuation? A. \$33,885.50.

Q. Your fee valuation? A. \$21,850.00.

Q. Bennington's easement valuation? A. \$28,802.68.

Q. Your easement valuation? A. \$7,283.33.

Q. Take block 5348. A. That is between Fourteenth and Fifteenth Avenues.

Q. City's valuation? A. \$18,000.

Q. Bennington's fee valuation? A. \$35,612.50.

Q. Your fee valuation? A. \$2,875.00.

Q. Bennington's easement valuation? A. \$30,270.63.

Q. Your easement valuation? A. \$6,958.33.

Q. Next is block 5367. A. Between Fifteenth Avenue and West Street.

Q. City's assessed valuation? A. \$8,500.

Q. Bennington's fee value? A. \$15,158.00.

Q. Your fee value? A. \$10,750.00.

Q. Bennington's easement valuation? A. \$12,884.30.

Q. Your easement valuation? A. \$3,583.33.

Q. Now take block 5369. A. Southerly corner of West Street and Cortleyo.

Q. City's assessed valuation? A. \$2,500.00.

Q. Bennington's fee valuation? A. \$12,100.00.

Q. Your fee valuation? A. \$7,500.00.



Q. Bennington's easement valuation? A. \$10,285.00.

Q. Your easement valuation? A. \$2,500.00.

Q. Now block 5384. City's assessed valuation? A. \$10,000.

Q. Bennington's fee valuation? A. \$20,570.00.

Q. Your fee valuation? A. \$17,100.00.

Q. Bennington's easement valuation? A. \$17,484.50.

Q. Your easement valuation? A. \$5,700.00.

Q. Now the totals for the eight blocks. The City's assessed valuation is how much? A. \$105,100.

Q. Bennington's fee valuation? A. \$207,270.25.

Q. Your fee valuation? A. \$137,765.00.

Q. Bennington's easement valuation? A. \$181,274.82.

Q. Your easement valuation? A. \$49,349.15.

Q. Trolley wires can be suspended on the railroad tracks? A. Yes, sir.

Q. To sum this thing up: the assessed valuation is \$105,100, Mr. Bennington values the easement alone at \$181,274.82, so he values the easement at about \$76,000 more than it is assessed for. He still retains the surface use.

Senator Thompson.—He also retains the use above the structure for an airship or any other kind of line of that kind that comes along.

Q. Have you discussed these figures with Mr. Bennington? A. I have repeatedly.

Q. What explanation has he given you for his figures as against yours? None.

Q. Well, if he hasn't given you an explanation how did he discuss them with you? A. It made it very difficult to discuss.

Q. Just tell us some of the conversations? A. Why I asked him what he based this valuation of \$270,000 as against my valuation of \$137,000 on, and he said that it was based on some facts that he had knowledge of. I asked him if he would give me those facts and he failed to produce any facts of any description to justify any conclusion. I told him that in my calculations I based my valuations on the sales that I had knowledge of and I called his attention to several. "Well," he said, "It is worth more than that," and that's all I could get. I have asked the Com-

mission if they would request Mr. Bennington to put in a report in answer to my report, that we might get together. I also asked Mr. Bennington why he gave the amounts he did and where he got his basis that there was about eighty-five per cent. diminution of value on account of the overhead easement. I told him about a deal, and he hasn't shed any light on it at all. In view of that fact I had nothing to do but make this report and to ask him to hold up the easement of title and see if we couldn't get together. There has been no "geeting together" and I have seen no report from Mr. Bennington.

Mr. Yeomans.—Is it not a fact, Mr. Cedarstrom, that Commissioner Hodge in order to avoid taking any real estate at this point suggested that the City build the railroad on Thirty-seventh Street and avoid taking any property and that we agreed to that?

Mr. Cedarstrom.—That is a suggestion that did emanate from Commissioner Hodge, and then on looking into the matter, it was determined that it wouldn't be advisable to do it.

Mr. Yeomans.—We consented to that change.

Mr. Cedarstrom.—I don't know whether you did or not.

Mr. Harkness.—I think you are in error in stating that you consented.

Mr. Yeomans.—Maybe. I asked the question, but as a matter of fact Commissioner Hodge did suggest that the route be changed to Thirty-seventh Street to avoid taking the real estate; although we had this right of way there, in order to preserve our rights there and have it free from this incumbrance, did we not consent to the change of the rule?

Mr. Cedarstrom.—The suggestion was that it would cause enormous damage to the property abutting on the northerly side of Thirty-seventh Street for that line, and in addition to that it would have a tendency to retard the increase of valuations with surface railroads in the center and the elevated above that and we would have to pay for any diminution of value and it seemed that it might be as well to stick to this right of way. So far as the

first block is concerned here between Tenth Avenue and Fort Hamilton, Commissioner Hodge and the other Commissioners there and the engineers on account of the total diminution of value, they have changed the construction at that point so that we acquire private property and it doesn't necessitate subway construction, and in that alone was the saving of construction of about \$100,000.

Senator Thompson.—How many condemnation proceedings have you had? A. (Mr. Cedarstrom.) I think this will be the first one.

Senator Thompson.—I would like to know what you can base your procedure on when you never had any experience with any. A. (Mr. Cedarstrom.) We can base it in this, for instance; you take my figures here of \$137,000—that is not a minimum figure that I could take the stand and sustain in a condemnation proceeding. But this figure here of \$207,000, is presented here, it is my opinion, based upon my general knowledge—testifying in condemnation, the thorough knowledge of this property, the study of all the conditions with reference to this property, that that figure cannot be sustained in condemnation, neither could the diminution of value of 83%. But I do know this also—at least it is my belief that the City to-day hasn't an expert that can do justice to this proposition in a condemnation proceeding. This is the taking of an estimate on railroad property. Propositions of that kind never come before the ordinary real estate man. Men who are familiar with railroad properties and diminution of value on account of some undertaking are usually in the employ of a railroad and are not in civil employ. I don't know of an expert to-day that could do justice to this proposition. In view of that fact I have argued a settlement of this proposition by getting together; I have suggested that Mr. Bennington come over and give his views on it, and that if they think there is any difference of opinion they have the power which I don't possess. I am simply giving my opinion in these matters, as I believe them to be. That is what I am employed for.

Mr. Yeomans.—Are you to be a witness in this condemnation proceeding? A. (Mr. Cedarstrom.) I am not.

Mr. Yeomans.—Is your arrangement with the Public Service Commission such that under it there is a stipulation or agreement by which you do not become an expert in any condemnation proceeding? A. Informally, for this reason—that I negotiate on settlements of all property, and I think that I succeed in settling about 80% of the accusations that come before me.

Mr. Yeomans.—You have such an arrangement, then. A. Just a moment—I will answer your question; and during these negotiations, facts are called to my attention, and I get knowledge of facts that might be used against the people in condemnation proceedings, so that I always tell them when they come in that any facts that I give in dealing with them by private purchase, that I shan't use those facts against them, and I will consider them of a confidential nature; but that any facts that I gain myself or that I have knowledge of, that I will feel at liberty to turn those facts over to the City experts. If it were known, or if I did appear as a witness in condemnation proceedings, in accusations of real estate, after conducting negotiations and getting all of the inside facts from other sides, I think that it would prevent many settlements from being made.

Mr. Yeomans.—Are you subpoenaed here? A. I am, yes.

Mr. Yeomans.—Why were you subpoenaed here?

Senator Thompson.—He was subpoenaed here because the Committee wanted him to come.

Mr. Yeomans.—Have you been furnishing this information to the Committee here before?

Senator Thompson.—Mr. Cedarstrom went over the line with the Chairman of this Committee some weeks ago, went over this property here at this particular point along where he required a lease of five years, down there by the docks. And along where you turn off from Fourth Avenue we went over there even in spite of one of your employees, who told the Chairman to “keep off the grass.” We stayed there and went down to Coney Island. He did that because the Chairman of the Committee asked him.

Q. (Mr. Moss.) That was after he was subpoenaed too? A. (Mr. Cedarstrom.) I had testified to these propositions.

Mr. Moss.— He has testified here before, and his testimony is continued.

Q. (Mr. Moss.) Right in connection with that five year lease that you spoke about—pardon me, Mr. Chairman, on that. In order that the whole matter may be on the record—we make inquiries of the Public Service Commission regarding a number of their operations, particularly in this section. This brought us in contact necessarily with Mr. Cedarstrom.

Mr. Cedarstrom.— I would like to ask you, Mr. Moss, to produce and put in evidence here, if I may, statements that were prepared by our office and given to the investigator of this Commission,—one of them covering all the purchases of transit development property that was transferred to the New York Municipal Railroad Company, another one covering this question of the \$150,000 purchase, another one covering all this South Brooklyn 38th Street cut proceeding, another one having to do with this five year lease which the Chairman has just referred to. Now, I suppose you have those.

Mr. Moss.— I haven't them personally, because they are in possession of Mr. Shuster or of the accountant.

Mr. Yeomans.— Will you produce them?

Mr. Moss.— They were obtained for the purpose of being used.

Mr. Cedarstrom.— Right on this very question, if you haven't them I would like to produce them myself.

Senator Thompson.— They are before the Committee.

Mr. Cedarstrom.— I would like to have them produced for this reason: One of them shows the description of each piece of property, shows the carrying charge and every expense attached to every item of real estate that was turned over to the New York Municipal, and shows that every item was turned over to the New York Municipal with only an additional carrying charge of 6%, with no profit of any kind to carry. Now with regard to the \$150 000 purchase referred to this morning, in that instance the Transit Development Company purchased from a variety of owners several of them in anticipation of the fact that the City might

needed this property and wanted to turn it over for this saving a large lot of property, and it was turned over to the city at cost without a dollar's increase of charge, but it was turned over, and the Transit Development Company has on its hands, ruined practically by reason of portions of this being cut off, a large portion left so that the Transit Development Company will be a loser in the long transaction. It was purchased by Col. Williams for the purpose of making this saving to this construction company.

Senator Thompson.— You don't mean to repeat that statement, that you paid more than \$150,000?

Mr. Yeomans.— \$214,000.

Senator Thompson.— And the property was turned over to the City?

Mr. Yeomans.— Yes, they were under obligation to convey to the City any more land that it wants there by reason of construction, and further than that we are to stand the condemnation up to \$10,000 by reason of closing Eighth Avenue and 38th Street.

Mr. Moss.— Now I want to ask Mr. Cedarstrom, if I may, in regard to this item, 37 and 39th Streets. Second Avenue, this five year lease, Mr. Cedarstrom, as I remember you stated this morning that Mr. Bennington wanted \$83,000 a year. Is that so?

Mr. Cedarstrom.— It was \$82,000 a year.

Mr. Yeomans.— What was your first offer for the preferred property? A. I think my final offer was my first offer, I think, as I recall it.

Mr. Yeomans.— Wasn't your first offer \$26,000 a year? A. Not including the railroad—the railroad improvement; that was for land alone.

Mr. Yeomans.— You did offer \$26,000 for something. A. I may; I don't say that I did. I think that I first took it up with Mr. Bennington from a real estate standpoint—that is, the real estate alone; and I think that my conclusion on that was \$26,000, and then more was added afterwards, after taking it up with the engineer, because I had the engineer's estimate, because of the

value of these improvements that were taken over, machinery and different things of that kind.

Mr. Yeomans.— But whatever you did offer finally, after consultation with Mr. Bennington, and after going into the matter and examining the basis, you both agreed that \$58,500 was a fair estimate? A. Yes.

Mr. Yeomans.— So that you came up to \$58,500, and Mr. Bennington came down? A. Now, let me see here: That is divided, twenty-five thousand per annum for land, and twenty-three thousand for buildings. Now, in all probability that \$25,000 was my first proposition, and my final, so far as land was concerned, because I can't conceive of the fact that I have here from the engineer's report how I could offer any twenty-six thousand for all—because certainly it was worth more than that.

Mr. Yeomans.— You agreed on \$58,500? A. We did.

Mr. Yeomans.— Was Mr. Bennington figuring on the same basis when you got to considering between you and came to a final conclusion—you both agreed to \$58,500, and that was fair? A. Yes.

Mr. Yeomans.— Now, isn't it a fact, Mr. Cedarstrom, that in every instance so far as any of these dealings with the companies of the Brooklyn Rapid Transit Company is concerned, that before a final agreement was reached the Public Service Commission in every instance agreed upon an amount greatly in excess of the amount that you said was a fair value to pay? A. I don't think so; I don't think the record will so indicate.

Mr. Yeomans.— What did you say that was worth there? A. I don't recall what I said it was worth, but I do recall this—

Senator Thompson.— Now, you want to ask him these questions, but suppose you ask him one question at a time.

Mr. Yeomans.— That is all right.

Let me ask another question—what did you say it was worth to turn over the railroad that I saw down there, from Avenue Y down to Coney Island, and to reconstruct the railroad on this

avenue? What did you say it was worth? A. If you will permit me, I will read the engineer's report.

Mr. Yeomans.—I want to know what you had to say. A. I will say that after that.

“In conclusion, from an engineering point of view, there appears to be no reason for approving the lease; it offers no advantage from an operating standpoint, from a financial standpoint, there is no warrant for paying any of the prices demanded, and no allowance should be given for any of the items named.

“Clifford Wells,  
“Directing Engineer.”

Mr. Yeomans.—What did you say that was worth? A. (Mr. Cedarstrom.) Well, wait a minute.

Senator Thompson.—We will take all afternoon on this, and to-morrow if necessary. I am going to give you a chance—I am going to tell you that you don't have to do it all in five minutes. A. (Mr. Cedarstrom.) In this report here, I didn't make any recommendations as to the value of the land.

Mr. Yeomans.—What did you say the value of that estimate was? A. I didn't make that report on that. That was taken up in an informal conference there, because I didn't give my figures in my report. I can bring it here and give you that figure. The report says, “I find upon investigation that the detailed figures submitted by the New York Municipal Railroad Corporation as being the estimated value of the property, making a total of \$200,605, are considerably overestimated.

“I am also of the opinion that some of these construction values should be eliminated from the calculations, and more especially the construction cost.”

Mr. Yeomans.—Didn't you make a report to the Commission, Mr. Cedarstrom, to the effect that the City should not take over this estimate, but—

Mr. Cedarstrom.—And the engineers concurred in the opinion—



Mr. Moss.— Well, if they had, the City of New York would have gotten into Surf Avenue; and they never will get into Surf Avenue.

Mr. Cedarstrom.— Yes; and there is no way of making a union.

Mr. Moss.— Somebody got in there, didn't they?

Mr. Yeomans.— Don't you know that two tracks are provided on Stilwell Avenue now near Surf Avenue, and all that the City has got to do is to condemn the right of way across to Surf Avenue. Don't you know that? Don't you know that the New York Municipal has provided and constructed and was under contract to put some two tracks there?

Mr. Cedarstrom.— Yes, you cannot connect with your Coney Island Terminal with the two-level elevated railroad and the proposition is also to continue that on down to Sea Gate, as I understand. There is no way that they can cross on the level with you. Now another point too, on the Graves Avenue Line, where we come into Coney Island, there we strike up against your two-level tracks, and you can't get into Surf Avenue.

Mr. Yeomans.— Don't you know that the City considered purchasing the property there of that hotel-keeper?

Mr. Cedarstrom.— I do not.

Mr. Yeomans.— He stood in the way of Stilwell Avenue. The City considered it, and decided not to do it.

Mr. Cedarstrom.— I knew this— that there was a Commission appointed and they were sitting, and we would devise title so as to get into Surf Avenue any time we requested the Board. Of the fact that they didn't want to pay I know on the awards, because there is absolutely nothing in the way of the City going down Stilwell Avenue and into Surf Avenue. There was.

Mr. Yeomans.— What did you finally say, Mr. Cedarstrom, that that right was worth to the City, to take over the easement from Avenue Y down to Nassau, and put the Nassau over on Stilwell Avenue.

Mr. Cedarstrom.—I have told you twice I haven't those figures here, but I will bring them. I estimated the real estate, and I took as a basis for the track and other improvements there figures submitted by the engineer, and I recommended the elimination of the construction of your trolley line on Stilwell Avenue, and so did they, and both of those propositions—

Mr. Yeomans.—What did you say that land was worth? \$50,000?

Mr. Cedarstrom.—I don't recall it. I haven't the figures here.

Mr. Moss.—I object, Mr. Chairman, that is taking our time in a useless way. The witness says he doesn't know, and we don't want mere guesses here, because we can get exact figures to-morrow.

Senator Thompson.—Will you send for it right away.

Mr. Cedarstrom.—I don't know whether I have them over in Brooklyn. This is a closed matter. I would like to read here from a report dated March 8th, to the Public Service Commission, with reference to this—1915.

“In conclusion, in view of the operating and financial considerations herein set forth and considered from an engineering standpoint, there appears to be no reason for approving the lease. It offers no advantages from an operating standpoint and from a financial standpoint there appears to be no warrant for paying any of the prices demanded. I therefore wish to recommend that the lease be not approved and the City proceed to construct the Elevated Line through Stilwell Avenue to the terminal at Coney Island. In this connection, however, I wish to point out that the cost of such elevated extension has not been included in the estimates of the work to be done by the City under the Dual Contracts. Therefore ultimately additional money may have to be provided to cover such expenditure, signed by the Chief Engineer.”

Mr. Yeomans.—But your report was not accepted by the Public Service Commission.

Mr. Cedarstrom.— It was.

Mr. Yeomans.— They didn't, did they?

Mr. Cedarstrom.— Both.

Senator Thompson.— Neither one of you make any time trying to impress the Committee with the value of the opinion of the Service Commission— that is, I mean the Public Service Commission, before the public.

Mr. Yeomans.— Senator, I am trying to show that in that report he had been turned down.

Mr. Cedarstrom.— I will admit this fact—that in numerous instances where your company has submitted propositions and I have disagreed with your conclusions that you have succeeded in getting much higher prices from the Public Service Commission, but not on the merits of the case from a real estate standpoint, but taking other facts into consideration, and bringing them in, that have really no bearing on the matter, and which facts I could not take into consideration.

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Mr. Yeomans.— But how did they come to that conclusion? They finally came to a conclusion against you.

Mr. Cedarstrom.— I am telling you— by you and Colonel Williams introducing fake accounts and telling them that if you didn't do it it would cost the City more.

Mr. Yeomans.— Did you not fix a figure up at Atlantic Avenue and Flatbush Avenue for taking certain houses up there which were afterwards condemned, and you had to pay more than you could have bought them for yourself— is it not a fact? A. It is not a fact.

Q. Was the condemnation award way in excess of that? A. I made no appraisal on those houses.

Q. You made some report on that. A. I did not.

Mr. Moss.— Mr. Chairman, I wish these gentlemen would not allow their dislike for Mr. Cedarstrom to impede the progress of affairs.

Senator Thompson.— I understand.

Mr. Moss.— I wish— I may have misjudged— but the questions have come even too rapidly for the stenographer to get them down, and he is a pretty good one, and before you finish a question you have got the second one, and before he can begin you are answering. Now, it don't help things a bit.

Senator Thompson.— I proceeded on the theory of letting them go because I think the more ugly they become the more I will find out.

Mr. Yeomans.— The reason I ask these questions rapidly is because I want to stop your (Mr. Cedarstrom's) speech-making.

Mr. Cedarstrom.— And I want to stop your asking ridiculous questions.

Mr. Moss.— It seems to me that Mr. Yeomans thinks that by mixing this thing up we won't get any facts out. Now, I want the facts.

Mr. J. Frank Smith.— I would suggest that Mr. Cedarstrom be permitted to make a speech, and then we will get our information.

Senator Thompson.— I am going to hear Mr. Moss now.

Mr. Moss.— Well, I thank you for that, and what I wanted to do was to call time for a moment so we can get a fresh start.

Mr. Yeomans.— Now, in answer to your statement that I want to mix this up, the very reason that I have asked you for these statements is that I want you to have, and this Commission to have, before you all the facts with regard to every purchase of every piece of real estate that has anything to do with this Dual System. Now, that is what I am after.

Mr. Moss.— If I had got that information from you myself I would have it here. But Mr. Shuster has it and it would come in the record that he has provided.

Mr. Yeomans.— Well, I am willing to furnish it to you.

Mr. Moss.— I don't want it now.

Mr. Yeomans.— Well now, getting back to Flatbush and Atlantic Avenue; what did you do about that purchase of real estate up there? What did you have to do with it?

Senator Thompson.— Before you ask him another question—

Mr. Cedarstrom.— Why, simply this— that I have acquired numerous properties which the New York Municipal Railway Corporation had contributed for and sent the money for the purpose. I don't know of a single instance where the New York Municipal Railway corporation objected to my figures, that I bought property for, as being unreasonable.

Mr. Yeomans.— Do you know that we agreed to contribute \$13,000,000, and that it is to be paid out either on construction contracts or upon items of the cost of construction fixed by the Public Service Commission, and when they send over to us a statement that they purchased real estate or that they paid a certain amount in interest or other items to go into the cost of construction, we haven't anything new to say about it.

Mr. Cedarstrom.— I do not know that you investigated the purchase. And I don't believe that if I approved a piece of property, that you would permit that to stand without voicing some opposition to it.

Mr. Yeomans.— Did you prove the payment?

Mr. Cedarstrom.— So far as the Flatbush Avenue, the acquisition of that property I found a peculiar condition existing there, and I was unable to get any figures from them that I considered reasonable at the time, and I took the matter up with the Corporation Counsel, and he thought in view of the conditions existing there it might be better to let that all go into condemnation than to acquire one or two properties. And I thought so myself, so it went into condemnation. The award was considered excessive by the Corporation Counsel, and I also considered it excessive. I believe they are going to appeal it.

Mr. Yeomans.— Do you know what the property that you took could have been purchased for?

Mr. Cedarstrom.—No, I don't; I know that Billy Green asked for eleven houses there on the basis of \$50,000 a lot, and on it the total award was about twenty-two thousand, I know that. I had negotiations pending with Mr. Ingraham, the owner; I didn't see him personally, but we had some negotiations pending. Billy Green as I understand bought it for some company of his; and I met him afterwards and he suggested that we get together on the basis of \$50,000 a lot, and I told him that that was altogether unreasonable and I wouldn't consider talking up the negotiations with him.

Mr. Moss.—He has told since then that he would have sold it to the City for less.

Mr. Cedarstrom.—I will call your attention, and I will get a copy of both an article in the Brooklyn Eagle at the time that he made this proposition, and also an editorial calling attention to the fact that the City shouldn't be niggardly in these propositions, and I think that the article read that I suggested something like \$10,000 a lot; but I thought it was not as unreasonable as the fifty thousands, and that you will find in the newspaper account of the Brooklyn Eagle. I will go over there and I will get that and give you the article. These are the only negotiations that I had with Billy Green. If he said that he had at any time offered that to the City for an amount less than the amount he acquired it for, in condemnation, he is telling a fact that is not so.

Q. (Mr. Moss.) Well, I suppose the Commission did take up the purchase of that property.

Mr. Cedarstrom.—Yes, we did. I took it.

Q. (Mr. Moss.) Now, can you let us know what the City could have purchased that for? A. (Mr. Cedarstrom.) Why, so far as Billy Green's part—

Q. I mean all the property that was finally condemned at that point. A. I can't. I don't think that I have the figures. In some of the negotiations there, as I say, the figures were prohibitive; there is no memorandum made of it, and the decision by the Board; and I thought that I might possibly make a statement on one or two, and as I told you here, I took the matter up with the Corporation Counsel and he thought it might not be advisable to buy two or three, and I agreed with him in that conclusion.

Q. Well, you don't know then whether the Public Service Commission did take up the purchase price of all the real estate there that was afterwards condemned? A. I tell you that I did in a way.

Q. Well, have you got that information? A. Well, I am telling you what information I have now. There is no record of the information.

Q. Hasn't anybody in the Commission a record of it? A. I don't know of any purchase there that was offered to me at less than the figure that appeared in condemnation.

Senator Thompson.— I have just been handed a paper that shows another rear-end collision on the Manhattan Elevated. Since I have been here all these collisions occur on the Manhattan, and I don't remember any on the B. R. T.

Mr. Yeomans.— I don't know about that.

Senator Thompson.— Why is that? Don't they have a signal system on the Manhattan Elevated?

Col. Williams.— Yes.

Senator Thompson.— Don't they have an adequate signal system?

Col. Williams.— I presume they do. I am not familiar with it.

Senator Thompson.— Who knows?

Mr. Harkness.— I think it is the same signal system on both roads.

Q. Is it an adequate system?

Mr. Harkness.— I am not acquainted with that. You will have to ask one of the operating engineers.

Senator Thompson.— There isn't any operating engineer here, is there?

Mr. Harkness.— We can have Mr. Wilder here. He is in touch with all of those matters. He is at your disposal.

Mr. Yeomans.— Mr. Cedarstrom, in regard to the Brighton-by-

the-Sea real estate transaction, I understood you to say this morning that from a real estate standpoint, if I understood you correctly, you thought the values were fair and all right. Was that so, from a real estate standpoint?

Mr. Cedarstrom.— I don't think I testified to that this morning.

Q. What did you? A. As I recall it, I testified that you wanted \$110,000.

Q. As to the real estate values that came down to a question.

A. There wasn't any question of real estate values in that deal between you and realty associates.

Mr. Moss.— Who was Billy Grieves? A. Why, he is from Brooklyn.

Senator Thompson.— I thought Reynolds was from Brooklyn.

Mr. Yeomans.— Did Mr. Grieves recommend you for the Public Service Commission? A. Not that I know of.

Q. He is a friend of yours? A. Well, I don't know as to that.

Mr. Harkness.— I can say this—that sometimes he hasn't acted friendly. A. He told me he was going to see the Chairman and have me fired. He did go in and see the Chairman, and when he left the Chairman's room I waited for him and told him that I was going to kill that Harway deal of his. He said, "Come in and tell the Chairman." I told him I wasn't taking orders from him. He went in and he was told something. I think I did kill the Harway deal. I think it cost them about \$750,000.

Mr. Moss.— What was that Harway deal? A. It was a change of property between the City of New York and some land concern; it was a question of ownership and involved a condemnation proceeding. The proposition came to me originally in this way: One of the councillors in the Commission said that there was some talk down at Coney Island that the Public Service Commission was mixed up in a deal down there, and that there was something wrong with it. He came to me—by the way, it was Mr. Reigmann—and he called my attention to it. I told him that I was too busy to run down rumors. Well, he took the matter up with the Chairman and the result was that the Chairman assigned me to this work, to go down there and find out about this thing, and



see what there was to it. I found the Harway deal in process, and I made a report to the Chairman, Mr. McAneny was called in, and I explained my side to him as I found it; and Billy Grieves came over and wanted to know what I was butting in on his reservation for, and he said he was going to have me fired, and I think the deal was killed—I don't think it ever went through.

Mr. Moss.—Who is in the Harway Company? A. I think the B. R. T. is mixed up in it in some way. I think Col. Williams is mixed up in that.

Q. (Mr. Moss.) Is that the company that got paid by the City for taking ashes down and dumping them? A. As I understand it there was a company formed by certain politicians, two of whom are now dead; one a Republican leader and one a Democratic leader, and another a railroad man, who had large interests involved, and the B. R. T. was also interested, and some civil engineer. They bought some land.

Q. At \$200 an acre? A. At \$200 an acre.

Q. And it is worth \$6,000 an acre now? A. Yes.

Mr. Yeomans.—The American Traffic Company that had the contract is now in process of dissolution.

Q. Who got the profit?

Senator Thompson.—This is just as I want it, but one at a time here.

Mr. Cedarstrom.—Mr. Ycomans says that Billy Grieves is a friend of mine. I am willing to be friendly with him.

Q. (Mr. Moss.) Did they have a separate ash-carting company that went to pieces? A. This was some years ago. I don't know anything about that.

Q. Something went to pieces. Wasn't that the separate company? Wasn't that the separate company that carted the ashes down? A. They usually have some method.

Q. But the ashes were down there on the meadow lands, on the \$200 land, and the \$200 land turned into land worth thousands of dollars, and figured in an action to be exchanged with the City. Now, who is going to get the profit there, no matter about the car-

rying company that failed, but who is going to get the profit on those improved lots?

Mr. Yeomans.— Well, we got ten cents a cubic yard for carrying ashes, and somebody was so crazy for the deal that they came in and got that garbage contract, and we were glad to have them take it.

Q. (Mr. Moss.) I was trying to find out who it was that was going to change this nice land with the City, that is all. Go on.

Col. Williams.— The American Railway Traffic Company had a contract with the City, to cart its ashes for it. And the cost during the four or five years of that contract was somewhere between four and five hundred thousand dollars—the exact amount would depend upon the value of the Harway Company land stock that they took in payment for filling some of that meadow land. They got paid at the rate of ten cents a yard, in stock. They hold that stock yet, and we will be very glad to sell it to you.

Mr. Moss.— But the ashes are down there.

Col. Williams.— On the land?

Mr. Moss.— Yes, and the land has improved in value fabulously, because of the ashes being put on it.

Mr. Yeomans.— There were values in real estate considered in that Brighton-by-the-Sea matter; Brighton-by-the-Sea had a 110-foot strip which was considered, and there were other real estate values there. And didn't you say that you agreed upon the values of the real estate from a real estate standpoint, and it wasn't the only conversation; there was the matter of division between the New York Municipal and the New York Consolidated. A. You are making a deal with the Brighton-by-the-Sea, with different companies. The net result being that—I will give you the net result there in a minute.

Mr. Yeomans.— The net result was that your figures were turned down and the deal went through. That was the net result. A. Well, I will give you the net result.

Mr. Moss.— Whether the Commission differed with you or

not, the Commission kept you in office, brought you back when you resigned and increased your salary. Isn't that so? A. Yes, sir.

Mr. Moss.— And they used their discretion in accepting your figures or not.

Senator Thompson.— They increased everything.

Mr. Yeomans.— How long did it take to get this deal consummated? How long was the City tied up there? Wasn't it over a year. A. I take exception to your saying that I tied it up. The position that I occupy is an advisory capacity to the Commission, to give them my honest views and conclusions on these different propositions that are assigned to me, and I only report on such propositions as they assign to me. Now, they have discretionary power to do what they wish.

Mr. Moss.— You haven't a single vote on the Commission, have you?

Mr. Yeomans.— As a result of these conclusions there were long delays. A. I take an exception to those, as two unreasonable conclusions. I take an exception to that, and I think that is not a fact.

Mr. Yeomans.— Well, they turned you down, didn't they? A. They did not.

Q. Well, they put through the Stilwell Avenue deal? A. You put it through. It couldn't go through otherwise. They approved it on a statement of facts that were not before me.

Q. They did approve the Stilwell Avenue deal, and they did approve this 37th Street deal. A. But they didn't overrule my figures. They took it from a different angle entirely at your suggestion.

Q. They gave more than you thought should be given in each case. That is a fact.

Senator Thompson.— I am inclined to agree with Mr. Cedarstrom in that Coney Island proposition there. I don't know about these other things, but I know he got too much money.

Mr. Cedarstrom.—I am just reading part of a report that I made on June 14th, 1915,—Brighton-by-the-Sea: Briefly, Mr. Woody sent a communication to Mr. Harkness as quoted in this report, wherein he stated that the Brighton-by-the-Sea is to receive \$150,981.21 in cash; \$110,000 to be paid by the New York Municipal Railway corporation, \$40,981 to be paid by the New York Consolidated. He gives a detailed list of the amounts that aggregate \$225,000. Among them is the charge for removing the surface tracks on the existing right of way, \$1,422, cost of removing existing tracks and overhead work, etc.

Q. On what road was that? Was that the Coney Island line? A. This is Mr. Woody's letter.

Q. One of the roads, you know, gave up its right of way, was simply put back on a 110-foot strip. I wonder if that is the one. A. I will tell you about that afterwards. Cost of removing existing tracks, etc., and overhead work of the Coney Island Brooklyn Railroad from its present right of way, from a point 200 feet east of Ocean Parkway, Coney Island Avenue, and reconstructing, refilling, etc., \$44,000. The cost of furnishing, delivering tracks, etc., \$8,000. The cost of necessary fill, \$13,000. The cost of constructing necessary sewers, \$6,000. And then added to this purchase was \$150,000 that should be paid to the Brighton-by-the-Sea. Now, in other words, the Brighton-by-the-Sea was to receive \$150,000.

Q. Excess real estate. A. The proposition was that it should be equally divided between the New York Municipal and the New York Consolidated. The division was that the \$110,000 was to be paid by the New York Municipal Railway, and then \$40,000 by the New York Consolidated. The two amounts made the \$150,000. In addition to that, all of the cost of improving land, shifting the right of way, refilling and all that sort of thing, made the aggregate \$225,000, should be divided equally between the New York Municipal Railway corporation and the New York Consolidated.

Mr. Yeomans.—The payment equally between; none of the companies were to get a cent. A. Absolutely, yes. And so that now, the New York Municipal as I stated here, under the terms of

the agreement, will receive a conveyance of about one-half an acre.

Q. It was a 110-foot strip? A. I say, the New York Municipal under this agreement, was to receive about half an acre, and an elevated railroad easement jointly with the New York Consolidated Company; and the New York Consolidated will receive conveyance of real estate of about six and a half acres, with a thousand feet frontage on the proposed street at a valuation for the purpose of contract of about \$117,000.

Q. It gave up its right of way and further than that don't you remember that when the question arose, you raised the question. A. If you will let me answer your question, and you can butt in afterwards, I will answer any question you want, when I get through. You are breaking in here; it isn't fair. Now, the net result of this deal was that the New York Municipal received one half acre of real estate and the New York Consolidated received in fee about six and a half acres with one thousand feet frontage on the proposed street, for a total for the purpose of contract, of \$177,000. All that they paid was \$110,000, and the New York Municipal was to pay the other amount, and the other items outside of the \$150,000 they were providing for street improvement and to benefit the New York Consolidated Realty Company. The additional expenditure of \$74,601 odd by the New York Municipal Railway corporation for street improvements, etc., all primarily benefits its own real estate. Eliminating the expenditure of \$74,600 from consideration, the New York Municipal Railway Company's share would be \$110,000, and the New York Consolidated share \$40,900, as provided for in the various contracts. It does not appear to me that the conclusions reached in the letter of Col. T. S. Williams are justified by the facts.

Now, the New York Consolidated owned property with an ocean front there and this was an exchange of rights between several lines and the Realty Association who owned the adjacent property which resulted in the New York Municipal getting an overhead easement on a proposed strip of land, and the New York Consolidated six and a half acres. It didn't seem to me that the New York Consolidated, receiving \$177,000 worth of real estate and with a thousand foot frontage on it, that all the street improvements should be divided equally between them to the bene-

fit of primarily and solely their property; and in addition to that that we should pay a part of the land fee too. We were getting overhead easement and a half of the strip of land. Now, in another subsequent report that I made—they asked me for another report—dated March 11th, 1915.

Mr. Moss.—Mr. Cedarstrom, are you descended from those old Northmen Vikings?

Mr. Cedarstrom.—Yes, and I am proud of it. I was born in Sweden.

Mr. Moss.—And you stood up against this opposition that we have seen a little bit of to-day all these years?

Mr. Cedarstrom.—Two years and a half. However, in the subsequent report here, I reported at a cross-examination on this matter that I stated that my opinion was that \$10,000 was reasonable, that the New York Municipal should be permitted to charge that, and that eliminating the contracts and asking into consideration just the elevated easement over this property without considering this real estate acquisition by the New York Consolidated, that \$50,000 in my opinion was the maximum that they would recover in a condemnation proceeding. And with the conditions proposed, that that station should be located at Ocean Parkway and also the Coney Island, both ends of this property, and with the limit of elevation, etc., and that they should erect the pillars in such a way as to conform to the proposed outlay of the street.

Q. Don't you remember that during these conferences when the question arose and you said you thought the New York Consolidated by getting this six and a half acres of land was getting too much that Col. Williams repeatedly offered to the Commission, and Judge McCall wouldn't accept it, that the New York Municipal take all that land and own all that. Don't you remember that? A. As I recall, we considered that a joke.

Q. Don't you remember that. A. But you would have the use of it and the New York Consolidated would have it; then any real estate that you have acquired, they would have the use of it.

Q. I know, but you are talking about the increased valuation that would come there. You offered to let the New York Muni-

cial get the benefit of it and credit all the construction, didn't you do that? A. Yes.

Q. Now then, further than that, you said that this right to build this structure by the New York Municipal on the 110-foot strip was \$50,000, wasn't it? A. I had the contract before me to analyze. Now, on the basis of those contracts, I reported that in my opinion that \$10,000 would be a reasonable amount that you should be permitted to charge, instead of \$110,000. I also, during the examination, raised the question that it would cost us considerably more to acquire that elevated railroad easement in a condemnation proceeding. It was my opinion that the maximum figure would be \$50,000, eliminating your contracts from consideration. The Commission finally awarded you seventy-five.

Q. And turned you down. A. They did not.

Q. They did it in every instance. A. No.

Senator Thompson.—We won't argue that now, but we will decide that in favor of Mr. Cedarstrom because he resigned at that time and they hired him back, and increased his salary. So that can hardly be said to have been turned down.

Mr. Yeomans.—You don't know what he resigned for.

Senator Thompson.—I will say right now that I think that the action of the Public Service Commission in awarding that \$75,000 was absolutely without a reason.

Mr. Harkness.—That point, Senator, might be only fair to have in the record. The memorandum that more or less induced the Commission to close the figure at \$85,000. So far as I am concerned I am willing to stand on that memorandum.

Senator Thompson.—Well, you had to stand on it. It was a recommendation signed by Mr. Harkness and Mr. Turner, and Mr. Whitney, then subordinates in the Commission, recommending an increase of \$35,000 because of fear of condemnation proceedings added \$35,000 on account of fear. The Public Service Commission reversed itself and allowed \$85,000. I say that there was no reason whatever. The Public Service Commission that can be swayed by a railroad because of fear of the railroad isn't a Commission worth while.

Mr. Harkness.—The best answer to that is this memorandum itself, as long as that attack has been made on me personally. I ask that that go into the record. I don't know that there is any objection to that going into the record.

Senator Thompson.—What is that?

Mr. Harkness.—My memorandum.

Senator Thompson.—Let the whole thing go in.

Memorandum copied into the record at request of Mr. Harkness follows:

“Jun 8, 1915.

“Contract No. 4—Reconstruction of Existing Railroads—Brighton Beach Agreement.

“With reference to the application for the approval of the proposed agreements between New York Consolidated Railroad Company, New York Municipal Railway Corporation and Brighton-by-the-Sea, Inc., for the exchange of properties and the relocation of lines at or near Brighton Beach:

“This application involves the relocation of the line of New York Consolidated Railroad Company as a six-track elevated structure on a new 110-foot street north of the present two-track curved right-of-way, together with the relocation in such new street of the Coney Island and Brooklyn Railroad Company's existing trolley railroad. No objection has been raised to the new layout but on the contrary it has been universally approved. The sole question that has arisen has been as to the amount to be charged to cost of construction under Contract No. 4. The improvement exclusive of cost of elevated structure will be about \$220,000. The proposition of the railroad companies was to charge \$110,000 of this amount to the New York Municipal Railway Corporation and thereby to cost of construction under Contract No. 4. Subsequently representatives of the railroad companies signified their willingness to reduce this figure to \$85,000. The Commission, however, on May 28th denied the application of the railroad companies but signified its willingness to approve the reloca-



tion and a charge to construction account under Contract No. 4 of not to exceed \$50,000.

"In view of the fact that Commissioners Wood and Hayward in voting upon the matter stated that they did so in reliance upon the advice of the Real Estate Expert of the Commission, and in view of the fact that Commissioner Cram stated that he has given consideration to every element it is amount recommended by the Real Estate Expert, to-wit, \$50,000, it seems that in fairness there should be placed on record the views we have orally expressed to the Commission and which probably influenced the Chairman and Commissioner Williams in favoring the adjustment on the basis of \$85,000.

"Although the Real Estate Expert of the Commission has stated that he has given consideration to every element it is plain that if he did give consideration to every element he resolved them all against the proposition. He has viewed the matter almost wholly as a real estate proposition whereas the real estate element is only one of the important elements that should be taken into consideration. His opinion is based in great part upon the advantage he thinks will accrue to New York Consolidated Railway Company through the consolidation of its realty holdings and to the element of plottage. In this he has failed to give consideration to one element, which in simple fairness should be considered, namely, that New York Consolidated Railroad Company does not operate the Brighton Beach property to get the utmost from it from a real estate standpoint. It is a development proposition to increase the traffic on lines to Brighton Beach and Coney Island. Our information is that this property has for many years past been operated at a deficit. Although there may be a speculative increase in value that may be reaped at some date in the future, for present purposes the acquisition of the additional property will probably tend to increase the deficit which will be borne by New York Consolidated Railroad Company alone and not by the subway construction or operation accounts.

"The Engineering Department had advised that the relo-

cation of the line as proposed will result in a saving of \$40,000 in construction cost alone. The straighter line is so much more desirable from an operating standpoint resulting in substantial operating savings for every year of operation that an expenditure of this entire saving is justified to secure it. The Real Estate Expert has stated that he had considered this element. It is, however, plain that if he did consider it he rejected it as an element because his figures of \$50,000 seem to be based entirely upon real estate values and is not large enough to include this construction saving. This clear saving of \$40,000 on the construction account should go far offset some of the speculative advantages the Real Estate Expert considers will accrue to New York Consolidated Railroad Company and also makes the proposition far more advantageous to the City.

“ The main purpose of this memorandum is, however, briefly to point out the results of an approval of the relocation of the line as requested in the New York Municipal Railway Corporation's letter of June 1st with the acquisition of the new right of way by condemnation.

“ Under this plan it will be necessary to condemn a railroad right of way for six elevated tracks through the old Brighton Beach Race Track property now owned by Brighton by the Sea, inc. This will be purely a railroad company condemnation proceeding with no allowance for benefits or for the concessions of one sort or another represented by the agreements before the Commission. There will be involved in such a proceeding not only of the value of the land within the limits of the new right of way but also the consequential injury to the balance of this large property due to the carving therefrom of this right of way, thus separating the property into two parts.

“ It is our best judgment that the acquisition of this right of way through a condemnation proceeding under all the circumstances will result in a cost, and thereby a charge to the construction account, largely in excess of \$85,000 which may reach, if it does not exceed \$200,000. On this cost New York Municipal Railway Corporation will be entitled under

Contract No. 4 to deduct annually six per cent. thereof in advance for the payment of interest on City bonds.

“Furthermore, after New York Municipal Railway Corporation condemns this right of way and pays Brighton by the Sea, Inc., the awards there will be nothing to prevent New York Consolidated Railroad Company and Brighton by the Sea, Inc., making such real estate deals as to the property south of the new right of way as would in effect give all of the respective advantages proposed by the agreements before the Commission without any credit whatsoever to the subway account. It is probable that the mere relocation of the line as proposed would result in the abandonment of the existing right of way and the reversion of the part of it within the limits of the property at Brighton by the Sea, Inc., to that company without its paying a dollar therefor and without the New York Municipal Railway Corporation securing any compensating advantage in the condemnation proceeding or otherwise.

“The Real Estate Expert has orally advised the Commission that the arrangement as between New York Consolidated Railroad Company and Brighton by the Sea, Inc. is fair. It is probable, however, that because of the relocation and the laying out of the new street a heavy profit will accrue to the realty company. The securing of profits by real estate operators through transit improvement and development is, however, inseparable from the entire Dual Subway proposition.

“For these reasons we respectfully recommend the adjustment of this matter upon the basis of charging \$85,000 to cost of construction under Contract No. 4.

“TRAVIS H. WHITNEY,

“Secretary.

“D. L. TURNER

“Deputy Engineer of Subway Construction.

“LE ROY T. HARKNESS,

“Assistant Counsel.”

Mr. Moss.—I don't see how Mr. Yeoman's point was well taken on this proposition.

Senator Thompson.—I haven't any opinion on any of these other real estate matters at all, but I have on this one. A. The Commission awarded \$85,000 there because they believed that they could compel the City to pay more money in condemnation proceedings. Now, the thing before me there, and the proposition I had to pass on, base a concrete statement of facts, contained in a concrete contract ; and that was the only item I had to pass on, because that was true. I may say this—that there were five contracts submitted originally to the Public Service Commission and before the deal was consummated I think three were withdrawn, and only two approved. I think that three of the contracts there, or two of them at least, became inadvisable. That is my recollection.

Q. What were those contracts? A. Brighton by the Sea, Contracts A, B, C, and two of them were finally approved, but there were five of them submitted for approval, or four submitted for approval. But you withdrew two of them.

Q. Only two immediately were withdrawn. You remember that several were sent over for your information. A. Now I am speaking of different parts of contracts. There were four distinct contracts—five, in fact, with which you claimed we had nothing to do and sent for our information wherein it was stated that the New York Municipal was to pay \$150,000 as against the other \$40,000, \$110,000 as against the \$150,000, that you said you had nothing to do with, and then there were four sets of contracts there between various companies. Now, two of those contracts were finally approved. The other two were withdrawn so there was an entirely different basis that you closed with the Commission on this matter here that was before me. I don't know now.

Q. Not the slightest.

Col. Williams.—The Commission didn't have any information that you didn't have. A. There were two contracts approved instead of four, and so two were eliminated, and you closed on the basis of what it would cost. That is hardly capable of being analyzed, even assuming that condition to exist.

Senator Thompson.—The record shows that \$50,000 was all

it was worth. That was the real estate appraisal. The record shows that. That extra thirty thousand dollars was allowed because they were afraid they might go to a condemnation and in some way or other get more money or put it over in some way. In other words, the thirty thousand dollars was for being afraid of them. That is the record. That is about what it shows.

Col. Williams.— After making that statement, Mr. Chairman, you will explain, I hope, for the benefit of those here, that none of that money went to any of our companies.

Q. It went to Brighton-by-the-Sea.

Senator Thompson.—I don't know where the money went, but I know the City paid it.

Col. Williams.— The City didn't pay a dollar of it.

Q. The New York Municipal paid it.

Senator Thompson.— Well, the City will pay. A. There is a nice little question. The New York Consolidated was the owner of certain real estate there, and they made a deal with the New York Municipal and the New York Consolidated as a result of this deal was going to acquire six and a half acres. Now as a matter of fact the New York Consolidated Railroad has the lease of all the Municipal property but it is personal property and this would become its property, so that it is one company dovetailing into another.

Q. But we offered to let the New York Municipal take that and if there was any increased valuation get the benefit. A. Now Mr. Yeomans you are belittling the intelligence of myself and the Committee, because the New York Consolidated on account of the property that it already had, the acquisition of that and the street increased its holdings enormously.

Q. It was all a railroad proposition, wasn't it? A. But it was the New York Consolidated.

Q. And by reason of bringing people to that point and by reason of making that more accessible to the ocean, by reason of making that more attractive the New York Municipal was going to get

no more business ; that was considered by everybody, and the City would thereby benefit by it. A. The New York Consolidated holding at that point as a value for ordinary purposes; it is the finest piece of property now of waterfront that I know of anywhere. Now, as I say, the acquisition of this part of the property and as the property now exists there it is the finest piece of waterfront that there is, to my mind, in the City of New York. This proposition here that was made that the New York Municipal should acquire it or the City should acquire it, if you compared the cost of this property here with the cost of the Dreamland site, you would find that it had an enormous value to it. And we were in no position to go into real estate speculation. I think I did say at the time that in private practice I would like nothing better than to take those two holdings and market them, and give you a nice market figure for them. Now, you are contending that this property is for railroad purposes and railroad use. You have a hotel there. You have got a music hall and you have other amusements there that you lease out, and of different characters.

Q. We lose money every year. A. If you do it is because you haven't the proper man to manage it. He is a very good man from a railroad standpoint.

Q. Well, we lose money there every month from a real estate standpoint. A. That doesn't alter the fact that it has an enormous value as real estate ; and you are not putting it to the best uses. The fact that a man has a piece of vacant property doesn't mean that the property hasn't any value.

Q. Well, of course, if you say that the City wouldn't take advantage of property that it rates give a chance to take. We offered to let the Commission take that property, attach it to the New York Municipal, get all the benefit of increased valuations, and do you know that that is what they are after on all these subways. But you say it was a joke.

Senator Thompson.—Smith says he would like to take the whole thing right off your hands. A. I didn't mean to boom it as high as that.

Mr. Moss.—Give it away. A. Mr. Yeomans says that they were ready to have the New York Municipal take over this piece

of real estate, and have it charged so that the City might get the benefit. Now see what a joke this is. The New York Consolidated on the field of adjacent land there, of which this now is a part. This and the ownership of the New York Municipal under the lease that the Consolidated has, any real estate holdings that the New York Municipal may have, they have the right to use ; so that if we permitted this charge against construction, New York Municipal, the New York Consolidated would have the use of it, and be free of taxation, and they would have this same use of it practically.

Q. The City is getting the benefit of it. A. What benefit would the City get on this ?

I will tell you, Mr. Yeomans, if the deal that you were proposing to make came before me in private practice, if any friend of mine would propose doing what you suggested the New York Municipal should do, I would have them committed to a lunatic asylum at once.

Q. You didn't want to, but yet you say that the corporation that did get it got a good many benefits from it, yet when it was offered to be turned over to the City, you didn't dare take it. A. Now, you are saying what you know is not so. The City didn't have the ownership of adjacent property. We couldn't utilize that property in itself for any purpose.

Q. It was right adjacent to the station at that point. It could be used for all these advantages that you are talking about for us — anything that Coney Island is used for. A. Now you know that the Public Service Commission cannot acquire any real estate anywhere unless it has a use for it.

Q. And the Court of Appeals has held that when a company acquires property at Coney Island for this very purpose, it is a railroad purpose ; and you know that. A. And you have had that thing passed by the Court of Appeals so as to wipe out our reversionary interests down there, and other interests down there, so you can lease the property when you cease to have railroad use for it.

Mr. Moss.— And of how much value are these recapture clauses down there after all ? A. Well, of course I am not com-

petent to state on that personally. I have an opinion as an individual ; but I don't think that has value. I think it is a liability instead of an asset. That is my personal opinion.

Mr. Moss.— I don't want to press that.

Senator Thompson.— Have you got through.

Mr. Yeomans.— Yes, I think so.

Senator Thompson.— If you have any more questions to ask, I am going to make you stop until Mr. Moss is through examining.

Mr. Yeomans.— I have nothing more to say.

Mr. Moss.— It is all agreeable, but I am thinking about the record, and if there is any value in friend Yeoman's questions I want to have them put on the record. But you are testifying an awful lot more than you are asking questions here. I wanted to get it down because I may want to ask you about it.

Senator Thompson.— I am now going on, because I have told him he could tell us about these real estate matters, and he hasn't got very far, so in the interest of getting that done I am going to have Mr. Moss and Mr. Cedarstrom take it up, and I am not going to let you interfere until they get all through, then I am going to let you go to it.

Q. (Mr. Moss.) Did you find out who were the parties that were interested in Brighton-by-the-Sea? A. I was informed by the railroad— New York Municipal— that Brighton-by-the-Sea was some sort of a subsidiary company of the Realty Association, and that Mr. Grieves was the one that they had negotiations with. I really had nothing to do with any deal that was made between the New York Consolidated and the Brighton-by-the-Sea. The only thing that I had to pass on was as to the reasonableness of the \$110,000— being a reasonable figure to charge against construction.

Q. (Mr. Moss) Well, when you speak of the Realty Association, are they friends of Mr. Grieves, or Mr. Grieves' associates? A. I think he was the Vice-President of the Association.

Q. Have you ever observed any friendliness between B. R. T. interests and Realty Association interests? A. I will say that



during this it wouldn't make any difference which one got the benefit of this. Col. Williams asked me once as to what I thought of this deal—whether I thought the Realty Association was getting—whether Brighton-by-the-Sea was getting the best of the railroad. I told them that my study of it would lead me to think it was an equitable deal between the two, but not an equitable deal as to the charge that they wanted the New York Municipal railroad to assume in connection with the deal. I think that is the point you have tried to drive in.

Q. Did you observe whether there were any friendly relations between the Realty Association and B. R. T.? A. I haven't had any opportunity to study that thing at all, or come in contact with it. I don't know of any deal outside of this that has come before me between the Realty Association and the railroad company. I think this is the only one that has. Is that right, Mr. Bennington?

Mr. Bennington.—Yes.

Senator Thompson.—We will now suspend until 11 o'clock tomorrow morning.

(Adjournment).

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**JUNE 9, 1916.**

Convened at eleven o'clock.

Senator Thompson.—Now in order to clarify the situation, this Committee is not going to investigate the wreck which occurred yesterday afternoon on the Manhattan L. We are perfectly willing to ask a question any time which only takes a few minutes, to find out what the real cause it, but the question of investigating it will not be taken up. To make my position perfectly clear about tion. I have said that there is such a thing as too many investigations at the same time. I don't believe there can be too much investigation, but I believe one investigating authority should handle it and investigate thoroughly, and then if that authority does not investigate it thoroughly, another authority that has the right should take it up afterwards and continue the investigation. I

think the people are always entitled to know all about a public matter, and if takes one, two, three or four or five investigations, they are entitled to find out about it, but I think one at a time clarifies the situation better. The Public Service Commission is doubtless familiar with the cause of these wrecks, and it is a peculiar thing that these L. wrecks on the Manhattan occur on these rear-end divisions. They have a speed device in some way on the subways that they don't have on the elevated. Do you know, Commissioner, what causes these rear-end collisions? Is the Public Service Commission satisfied as to that?

Mr. Whitney.—What, to my mind, causes it is lack of attention on the part of the motorman. Of course that doesn't go into the signals at all.

Q. Couldn't they substitute a system of signals? A. In the subway there is a trip system and a speed control system and there is being installed a similar system on the express tracks of the elevated and on the local tracks of the elevated on the curves and crossovers. The remaining portions of the local tracks of the elevated and the local tracks of the subway are so equipped. One of the curious things is that, while the local tracks of the subway and the local tracks of the elevated are not similarly equipped, that these rear-end collisions take place on the elevated and don't on the subway. It is probably due to a considerable extent to the fact that the motormen on the elevated tracks are visiting with the neighbors, things they can't do on the subway.

Q. (By Mr. Moss) Doesn't Mr. Hedley sell a contrivance to companies for preventing telescoping of cars? A. Not preventing telescoping, Mr. Moss. There is however, a device, a so-called anti-climber device, on the bumper of the car, which is supposed when the two cars engage to prevent them from cutting into each other.

Q. That is telescoping? A. I think all the companies in this district are equipped with those.

Q. Do the elevated use them? A. Yes sir, and these cars yesterday were equipped with them.

Senator Thompson.—I was only interested because it seems

that since I have been here these accidents are all confined to the Manhattan L's. They don't have them in Brooklyn or in the subway.

Mr. Whitney.— Yes, they have a few rear-end collisions, too.

Senator Thompson.— This completes the investigation into the Manhattan L. wreck yesterday by this Committee finally. The rest will be left to the District Attorney and Public Service Commission, both of whom we think are well able to cope with the situation. They have plenty of power anyhow.

Commissioner Travis H. Whitney was called as a witness, and, having been previously sworn, testified as follows:

Q. (By Mr. Moss.) Commissioner Whitney, we have asked you to appear this morning to get from you an expression of views which we believe you have partly expressed regarding the relation between the Public Service Commission and the subway operations under the dual contract. I judge, from what I have learned, that you are of the opinion that the Public Service Commission will have to use a great deal of caution and good sense in dealing with the problems that arise, in order that the city may not be greatly injured by over-expenditures of money. Do I get you right? A. Perhaps, Mr. Moss, I can just give a little explanation with regard to that article that you referred to, which I believe was in the Sunday World of a week ago. I have spoken at a number of meetings of civic organizations and taxpayers associations more or less with respect to the dual contracts. Then I put various parts of those together in an article, and a man came to me from the World who apparently had got the suggestion from something or other that I said at one of these meetings, and asked me for an interview on this subject. I turned that article over to him, and he then took that, using portions of it, made an interview out of it, and while in that article the quotations are accurate, it is not complete at all.

Q. Understanding that, Mr. Whitney, I have asked you to give the Committee the fuller statement of your views. Will you take that and kindly read it, and if you find anything as you are reading that you want to amplify or anything that you don't consider

pertinent, use your good judgment as you go along. A. (Mr. Whitney reads as follows:)

“ The Dual System— An Experiment in Municipal Ownership and Operation.

“ The private ownership and operation of public services has important advantages and evils. The Dual Rapid Transit Contracts combine many of the evils of private operation and few of the advantages of public operation. At the same time it should be pointed out that they afforded an immediate opportunity for an enormous development of the City, both physical and economically, with greatly increased property assessments which will produce the increased tax returns needed by the City for its many activities.

“ The successful administration of these contracts by public officials, if supported by an intelligent public, will go a long way toward producing the capacity for the municipalization or nationalization of the great utilities vital to the public under modern civilization. The necessities of the European countries in the present war have required public control of all essential activities. While it may never be necessary for us to go so far, it is important to have proper experience and be prepared, when emergencies arise or public policy dictates, to assume public control.

“ Accordingly I am glad of this opportunity to point out the terms of the agreement into which the city has entered, and the duties and responsibilities of public officials and of the public ; as well as the opportunities in the hands of the companies to complicate the problems of the city.

“ The Commission, in March, 1913, after several years of negotiations, signed contracts with the Interborough Rapid Transit Company and the New York Municipal Railway Corporation for extensions to the rapid transit systems of the City, which increased the track mileage from 296 to 621 miles at a cost of \$350,000,000. Of this amount the Interborough is to spend \$105,000,000, the B. R. T. \$61,000,000, and the City the remainder. These extensions add 170 miles to the Interborough system, and 155 miles to the B. R. T.

system. Of the lines owned by the City 222 miles are leased for operation by the Interborough and 110 miles by the B. R. T.

*“What were the essential features of the Dual Contracts?”*

“The main features were :

“First. The companies were allowed to build and operate extensions and third tracks to their own lines.

“Second. The City was to build certain lines and lease them for operation to the companies.

“Third. The City may build additional extensions and require operation by the companies.

“Fourth. The City or its designated agent may recapture the rapid transit lines leased ; and

“Fifth. The City secures rental for its lines leased to the companies.

*“How is this rental arrived at?”* The City is spending over \$200,000,000 of its own money for rapid transit lines which are leased to the companies for operation. The rental to be paid by them is based on the amount of money necessary to pay the interest and provide a sinking fund on the bonds issued by the City. The payment of an amount by the companies to the City sufficient to care for such interest and sinking fund is dependent, however, upon whether the lines earn sufficient money ; for under the contracts the companies are allowed from the gross income of the rapid transit lines to deduct payments or obligations as follows :

“First. Operating expenses.

“Second. Preferentials ; that is, an amount equivalent to the average profit earned by the companies previous to the signing of the contracts.

“Third. Fixed charges on companies' moneys invested in new lines.

“Fourth. Fixed charges on City money ; and

“Fifth. An equal division between the City and the companies of any remainder.

“Should the gross income be insufficient to make all of these payments, the deficits accumulate and can be reduced

only by possible future increased earnings, except that the deficits on the City's investment, under Contract No. 4 with the B. R. T. must be cared for by taxation.

*"What are the most important problems in connection with the present work."*

"There are three great problems :

"1. That the construction work shall be honestly, carefully and diligently performed.

"2. That the cost of such construction work shall be diligently supervised ; and

"3. That the cost of operation shall include only such expenses as are properly chargeable under modern efficient railroad operation.

"Under the contract the Commission has power to prescribe the form of accounts and records kept by the companies, power of approval of the contracts to be entered into by the companies, and the power of entry and inspection.

"With respect to construction, the Commission makes the plans, lets the contracts and supervises the work and quality of materials, passes upon payments and is responsible for final determinations as to total cost. Even with respect to construction work done by the companies on its own lines the plans must be approved by the Commission, the materials used must be inspected, and the work supervised by the Commission.

"Cost of Construction. It will be noticed that from the gross income the companies are allowed to take payments sufficient for fixed charges on expenditures by the companies, which payments takes precedence over any payments on account of the City's investment. Consequently, it is of great importance that company cost shall be only the necessary investment. Under the contracts no amount can be included in the capitalization of the rapid transit lines, either by the companies or by the City, until there has been a determination by the Chief Engineer of the Commission. He is expected to make a determination for each quarter year as to the amount actually expended during that quarter by the companies as well as by the City. Should there be dissat-

isfaction with his determination, either the company or the Commission may within thirty days object, whereupon the matter goes to a board of arbitration for a redetermination.

"So far the City has expended \$120,000,000 on its rapid transit work, the Interborough has spent \$54,000,000 and the B. R. T. has spent \$38,000,000. Yet the determinations have proceeded so slowly and carefully that so far they have allowed only the following to be charged to capitalization on rapid transit work :

" Interborough Rapid Transit Co. ....	\$ 345,504.85
" Brooklyn Rapid Transit Co. ....	21,319,213.50
" City .....	63,926,790.76

"*Cost of operation.* It is plain to everyone that the determinations shall not allow excessive charges to capitalization. It is of even more importance, however, that during the period of operation the deductions from gross income to take care of operating expenses shall not be so excessive that little or nothing is left to care for the fixed charges on the amounts invested. The importance of this matter was recognized in the contracts, for there is the following provision :

"Inasmuch as the City's return from its investment in the Railroad and its exercise of its right to take over the Railroad as provided in the Lease will be affected by the amount of the Lessee's expenditures on account of its contribution toward the cost of construction of the Railroad and the cost of equipping the Railroad and of maintaining and operating the Railroad and the Existing Railroads, the Lessee shall strictly comply with the provisions hereof for assuring to the Commission supervision by it of all operations of the Lessee.

"The Lessee shall, therefore, in addition to providing facilities for inspection as hereinafter provided, provide the Commission with all facilities necessary or convenient to afford the Commission full and complete supervision of all operations of the Lessee in or about the enterprise of contributing to the cost of construction of the Railroad and of equipping the Railroad and of maintaining and operating the Railroad and the Existing Railroads."

“To my mind the supervision of the cost of operation is one of the most important duties devolving upon the Public Service Commission, for upon the character of its supervision depends in large measure the financial prosperity of the City insofar as is important the question of whether there is a return upon the \$200,000,000 investment.

“In ‘cost of operation’ are such important questions as wages and the methods of employment, cost of power, amount set aside for maintenance and depreciation, damages, increase in service, inclusion of extensions either by construction of new lines or by the addition of transfer points.

“I have mentioned ‘damages’ as one of the elements of the cost of operation. Judge W. L. Ransom of the City Court, who, from his experience with the Public Service Commission, realizes the importance of its regulatory and rapid transit work, in a recent address pointed out that the Interborough in one year paid out over \$500,000 and the B. R. T. over \$870,000 in connection with tort claims. These amounts arise either from jury verdicts or from settlements by the companies with litigants.

“Judge Ransom urges greater jurisdiction in the Commission as a regulatory body over such expenses of Public Service corporations. While it may seem cold-blooded, yet it is necessary that the Commission see that the companies do not exercise undue liberality in settling such cases, or in failing to defend them sufficiently. That such may be the actual fact is indicated by Judge Ransom. He said: ‘If, as some judges and others have lately said, there is a noticeable tendency to pay small amounts in settlement of damage claims where trial would mean no payment at all, who foots the bill? Are the company, or its managers, directors or stockholders, anything out of pocket? The taxpayers would pay the cost of trying the case in Court, and the taxpayers likewise lose when increased operating expenses take precedence over any return to the City upon its capital invested, much less any share in profits of the enterprise. Under circumstances such as those now existent, it is certainly creditable to those responsible for the conduct of the claim and



trial departments of local public utilities that the defense of tort claims believed to be unfounded or exaggerated continues to be waged with so much energy and spirit, and withal now so honestly and fairly. Not only the City's return upon its vast investment, but even its perhaps shadowy chance of ultimate re-capture of its rapid transit lines upon the expiration of the present leases, are vitally affected by anything which may increase or diminish the amounts charged to operating expenses before the city can realize anything upon its money. When legislation is hereafter broached which proposes to put upon a more sound, modern and honest basis the determination of the amount to be paid by public service corporations to persons injured, is there not reason to expect that Courts would take favorable cognizance of the public interests at stake and perceive the propriety of such legislation?

"Under private operation, company officials are diligent to keep expenses of operation at as low a point as possible in order that there may be good dividends. Under the Dual Contracts, however, the two systems will comparatively early take in sufficient gross income to meet operating expenses, preferentials, and fixed charges in the companies' investments, and thereafter there will not be the same incentive to keep down operating expenses, so that gross income shall be sufficient to meet fixed charges on the City's investment. Therefore, there will devolve upon the Commission the responsible duty of checking and controlling any tendency toward swelling operating expenses.

"In other words, there will fall, in a large measure, upon the Public Service Commission the problem of railroad management. I may give a few examples of what I mean. Assume that the gross income from one of the companies is sufficient to meet the companies' payments and something on account of the city's investments and a request is made by motormen for an increase in wages or for the establishment of a pension system. The cost of granting such a demand will not come out of the company, for its effect on reducing the net income will be merely to reduce the amount available

on the City's investment. In other words, an increase in such wages will be paid by the City, and so would the expenses of maintaining a pension system. In other words, the City may actually be in the position of maintaining a pension system for railroad employees before it has reached the point of being able to support a pension system for its own civil employees.

"Likewise a request by the public for an increase in service, such as the operation of more frequent trains or longer trains will be met at the expense of the City. That this is no wild alarm is shown from the fact that recently when the people of South Brooklyn inquired of the B. R. T. whether transfers could not be given from the surface lines to the Fourth Avenue Subway, which in effect meant reducing the average fare collectible on the rapid transit lines, Col. Williams, President of the company operating the rapid transit line, as well as of the surface lines, replied that he was perfectly willing to arrange for such transfers if the approval of the Public Service Commission could be secured. In other words, the burden of considering whether such an addition to the expenses of operation should be made falls not on the company but on the Commission. The public will demand more service, more or better equipment or additional stairways, and other requests which will have a bearing on cost. If the income of the system is sufficient to meet the operating expenses, preferential and fixed charges, the company's officials will be more ready, and perhaps over-generous, in approving such requests 'if the approval of the Public Service Commission can be had, because the brunt of financing such amounts really falls on the City, since the payment of the entire interest and sinking fund charges on the City's original outlay is just so much deferred.

"You can readily see the situation to which this will lead. Public officials charged with responsibility for financing and controlling the City's rapid transit railroad should use their utmost endeavors to prevent an accumulation of the enormous deficit during the initial operating period that requires levies on the taxpayers for interest and sinking fund pay-

ments, and should be insistent that requests for modifications be not approved unless really necessary. By 'necessary' I mean just what the word implies—not merely convenient. Thus, with the financial burden taken largely from the company and placed on the City, the company is more likely to be unduly generous and will, therefore, agree to these various proposals 'if the approval of the Public Service Commission can be had.' We will, therefore, have the unusual situation of company officials taking the popular side of increases, while public officials will have to take, more or less, the unpopular side of seeing that service and finances fit as nearly as possible. While it is probably unimportant whether the decisions of the Public Service Commissioners are popular or unpopular, it is of the utmost importance that the citizens of New York City, if they are to show their capacity for home rule and self rule, not only in respect to ordinary governmental functions but also in respect to the operation of finances of public utilities, must have a thorough appreciation of the facts with regard to an enterprise like that of transportation in which it will have invested upwards of \$200,000,000.

"To my mind, therefore, there is a great duty resting upon the civic, commercial and taxpayers' organizations as representatives of the public. As a Public Service Commissioner, I realize the duties and responsibilities involved in the management and control of the greatest public transportation system in the world. It is for that reason that I want the watchfulness and criticism of such organizations. I am not trying to shift the responsibilities I have assumed, but I do want to urge the importance of disinterested and intelligent study of the work of this Commission.

"I want my public actions scrutinized. The public interests are better protected by watchfulness contemporaneous with the actions of public officials than they are by postmortem headlines.

"There is a Civil Service Reform Association to guard the principles of civil service. There are other organizations de-

voted to important principles of government. Should there not be a 'Public Service League' or a 'Rapid Transit Association' to see that the City's vital interests in its rapid transit investments are successfully administered. The Citizens' Union is already forming a special committee and other organizations should do likewise. I can promise that they will have access to all essential data.

"Complete operation under the Dual Contracts will mean heavy additions to taxes, for the questions of management will represent constant conflict between the interests of taxpayers and of passengers. Perhaps liberal service *should* be paid for from taxes instead of revenue. If this is to be so, however, taxpayers should have a thorough advance appreciation of the problems before the Commission. It would be unfair for taxpayers to damn the Commission for actions that have added to taxes without having aided the Commission to resist unreasonable demands by company employees or by passengers.

*"What Is the Immediate Work of the Commission?"*

"The Commission has before it a great many important matters that have accumulated during the investigations. It has pressing current questions. It is engaged in planning for the future, in re-arranging its staff and work so that increased efficiency shall result. In some respects it is under-officered, although since December it has succeeded in reducing its annual budget by nearly \$250,000.

"The Commission must build up a permanent staff of technical men competent to deal with the companies in the problems of operations and accounting. Finally, it hopes to work out a method of periodic statements or reports that will give the information essential to the taxpayers, who are the stockholders in this great enterprise."

Mr. Moss.—I think this is one of the most important pieces of evidence that has been laid before this Committee. It furnishes material for reflections upon what has happened in the past and much more material for reflections upon what is to come, and I am gratified to find a Public Service Commissioner who is looking into the future with the idea of minimizing the evils that

might be wrought under this dual system. A. (By Mr. Whitney) Mr. Moss, I didn't undertake to pass judgment upon the question of the wisdom of the dual contracts.

(By Mr. Moss) I notice that you have not and I didn't mean to imply that you have done so. A. What I am undertaking to do, however, is to do my share towards drawing the public's attention to the fact that they have in reality embarked upon a practically municipal operation, and they should look upon that from the point of view as stockholders and realize that the questions that come up will be the questions that arise between taxpayers and passengers. If they want liberal service, that may be all right. They will pay for it as tax payers, but they ought to realize that that is what it is.

Q. In other words, if fare is cut down below five cents it will have to be made up in the tax rate? A. Yes, sir.

Q. There is practically now, then, no such thing as reducing fare, because what is reduced in the way of fare must come up in the way of taxes? A. Well, while the amount of payment for fare is not reduced, the relation between service and fare might be constantly changed by increasing service, improving service, so that what they get for the nickel is more than it was before.

Q. Well, I am not losing sight of the fact that the contract provides for five cent fares, but there are other fares that may be arranged and there are ways in which changes might be made in that rate. A. As a matter of fact, Mr. Moss, the giving of a transfer, exchange of transfers of the surface line, is in reality a reduction of fare to the rapid transit line.

Q. So that it will propose to have a universal system of exchange which practically would reduce the five cent fare, that would practically have to be considered by the city of New York as a stockholder in the Company, to see whether it could be afforded? Yes.

Q. And there is no prospect, as the matter stands now, that it will carry itself for some years to come in such a way as to relieve the city from taxation burdens, is there? A. Well, I can't be specific as to time, but my impression is that Contract 4 will reach a self-sustaining basis very much sooner than contract 3 and within a comparatively prompt time.

Q. Why? A. For one thing, the company has very much less investment on which to earn an income.

Q. That is, it hasn't so much—I see, it hasn't so much interest to provide. A. Yes, sir.

Q. But isn't another reason that it has something of an advantage over the Interborough in paying traffic—short haul, for instance? A. It will have a very great expansion of traffic territory, which will aid very materially.

Q. Isn't the city of New York practically a co-partner in this enterprise? A. Yes.

Q. And it is a co-partner which must submit to prior rights in the other partners—that is, preferentials—must submit to the deduction of preferentials? A. Yes.

Q. And in the matter of incurring expenses, it has no voice whatever? It may have a voice about allowing them afterwards, but in the incurring of expenses it has no voice, has it? A. Yes, it has a power of approval.

Q. Power of approval. That is all? A. Which expenses do you mean?

Q. Operating expenses, payment of damages, increase of wages, administrative expenses. It has no voice in these matters when they occur? A. Yes, it can object to it and throw it in for arbitration.

Senator Thompson.—What he means is initial incurring of the expense is made by the railroad, itself. Q. Yes.

Q. (By Mr. Moss.) It is easier to prevent an expense before it has been made than to argue it after it has been made. A. Yes.

Q. Has the city any co-partnership right in the matter of incurring expense? A. Well, I don't know just what you mean by that question.

Q. The ordinary right of a co-partner to determine or judge upon the incurring of an expense before it occurs. A. I should imagine that in a co-partnership in a business of any size, a great many expenses would be incurred by one or the other of the partners without the knowledge of the others. There is no doubt about the fact, Mr. Moss, that under the contracts, the company goes ahead with its operating expenditures, whatever they may be,

whatever it may deem sufficient or wise to incur. The Commission then has the right, in checking over those expenses, of objecting and throwing the objected item into arbitration, and then the determination of the arbitration as to the amount that is properly an operating charge will be deducted and the amount that was thrown out would have, if it is already incurred, to come out of their own preferentially. I may be a lawyer but I don't want to undertake to make exact comparisons between that state of facts and what may be true with respect to co-partnership or anything else.

Q. But it is not ordinarily a co-partnership right to object to an expenditure that the other partner has incurred and then be obliged to go into an arbitration over it in order to make the objection valid.

Senator Thompson.—I guess all us lawyers agree that that is the law. Let us take an instance. You go on operating. Now if there is an operating expense for more than \$50,000.00 it has got to be submitted to the Commission—that is, any contract for operation that exceeds \$50,000.00 or for more than a year. You raise the President's salary \$10,000.00. Is that a contract that amounts to more than \$50,000.00 because he is already drawing a hundred. Is that a contract for \$150,000.00 or a contract for \$10,000.00?

Mr. Yeomans.—I don't want to answer that. A. (By Witness) I certainly don't—

Senator Thompson.—Here is the Public Service Commissioner that has had the most experience of any man on the Commission, and here is a lawyer that has had as much experience as any lawyer in New York city, and they don't want to answer that question. How are the people in the city of New York to know?

Mr. Yeomans.—The city is safe, either way.

Senator Thompson.—I don't know whether they are safe in your hands from what I heard yesterday or not. What I am trying to draw attention to is, I have tried to show that while I am not here to particularly hand any bouquets to the Public Service Commission that was, yet when the Public Service Commission

tries, I would like to call attention to some of the things that they are up against in the way of lack of power, lack of initiative, lack of right of initiative. These things have got to be determined. There is a law suit. They want to raise President William's salary, which is now \$95,000.00 isn't it?

Mr. Yeomans.—As far as that contract is concerned, every expenditure is absolutely tied up and if it is not proper, it has to be submitted to arbitration.

Q. (By Mr. Moss.) You had an arbitration involving quite a large sum of money, several million dollars, some years ago. A. (By Witness) Yes.

Q. How long did that take? A. Well, that was not under similar contractual provisions.

Q. I know, but it was an arbitration. A. It really was not settled by our Board of Arbitration at all, Mr. Moss. There was a Board of Arbitration appointed but as a matter of fact settlement was arrived at between the parties—

Q. Don't let's get into that because we will get off the track. A. My refusal to answer that question is not based on lack of opinion.

Senator Thompson.—It seems that all these expenses incurred are subject to the approval of the Commission. Now, if they don't approve, then they can arbitrate, or they can go to the Court. Now, I don't know who decides whether they will have arbitration or the Court, but I assume that if you don't agree on arbitration, then you go to Court after any expense. Now, take for instance, Hedley, of the I. R. T. He gets up a patent; he is working for the I. R. T. while he gets it up; it has been the law as long as I have been alive that if a man is working for another and if, in the course of that employment, he invents or conceives something that is patented, it belongs to his employer. Now, the employer sees fit to waive that law and pays him \$10.00 an hour or \$10.00 a minute or something else for use of that patent. Now, of course, the expenditure for the use of that patent under this contract would be subject to approval, arbitration, or the Court, but would the fact that they are taking the patent from an employee—would that come before the Commission or would that be subject to the ap-



proval of the Commission? Would the Commission have the right to say, "Yes," the expenditure for the use of this patent is reasonable but you can't charge it because it is one of your employees that conceived it?" Have you the right to pass on that question under this contract? A. We certainly have a right to pass on the reasonableness of the expenditure.

Senator Thompson.— But the question as to whether that man being in the employ—

Mr. Moss.— That is an essential point, because the Interborough is paying Mr. Hedley's people a lot of money for patents. A. (By Witness.) That contract would have to come before the Commission for approval.

Senator Thompson.— Suppose it was for \$49,000.00 and ran for eleven months. Let's see what the Commissioner has to say about this. I doubt whether he has thought of this question, the question as to whether or not the Commission would have the right to enforce the law if it was a law that the I. R. T. could not pay one of its employees for a patent conceived in its term of employment, no matter how reasonable the amount of the expenditure might be. A. Well, I have not any doubt that the Commission under that section of the contract, could approve or disapprove of the proposed contract for any reason satisfactory to itself.

Mr. Yeomans.— And the Chief Engineer could throw it out.

Senator Thompson.— That would be an operating expense. Supposing it was an anti-climber.

Mr. Yeomans.— They could go into arbitration.

Senator Thompson.— Suppose it was a patent on a punch.

Mr. Yeomans.— It is either a construction charge or an operating charge. You see, under Section 216, chapter 5, every safeguard is thrown around every expenditure, for the Commission not only has the entire supervision of the construction of railway, maintaining equipment and operation of the railway, but they can examine all the books. Every construction contract of any kind has to go to the Commission before it can be entered into.

Mr. Harkness.—The right of the Commission to object isn't limited to the point of reasonableness. It has the same right to object on the score of propriety.

Senator Thompson.—Of course whatever rights the Commission has in respect to the pay of employees or the salaries of superintendents, etc., arise from the contract provision. Under the Public Service Commission you haven't such power. For instance you haven't any power over the expenditures of the Consolidated Gas Company or the Brooklyn Edison Electric Company. They can charge anything they want. They can pay any salary they want, even though it affects rates. You haven't any jurisdiction over that, have you? A. (By Witness.) No, excepting that in a rate case you can make your calculations based on reasonable expenses.

Senator Thompson.—Do you think you could in a rate case? A. Yes.

Q. (By Senator Thompson.) Does the Court confirm that? A. Well, it does not confirm very much of anything.

Q. For instance, the Consolidated Gas Company pay their President \$75,000.00 a year. You have had that rate case, and assume that now within two or three weeks they raise him to \$275,000.00 a year, and a year later you have a rate case. Don't you have to take into account that expenditure? Isn't that one of the expenses of operation that you have not anything to do with? A. I think from a technical, legal point of view, you would say that reasonable administrative salaries would be sufficient an amount. I think that the provisions of the contracts with respect to power of supervision and approval are pretty complete but the point I undertake to make with respect to it is that no matter how complete they are, there can't be any long, continued, consistent adherence to those provisions of the contracts without a very intelligent and wide-awake public interest in the administration of the contracts by the Commission.

Q. But if you get that you have got to have a very consistent and wide public understanding about them which does not exist today.

Q. (By Mr. Moss.) If there is anything that the public do not understand it is the dual contracts and the responsibility and liabilities on them. A. At the time the dual contracts were under negotiations and under public hearings and discussions, the only thing the public was interested in was the question of an additional subway or an additional elevated through their street. They didn't care what the terms were and they were impatient with us because we were trying to stiffen up the contracts. They were passing resolutions urging us to approve the contracts and stop wasting time on perfecting them.

Q. That leads me to this question, and may I preface it by saying that one of the most impressive parts of your testimony was that in which you said that there is not the same incentive on the part of the Company to keep down operating expenses after the preferentials had been provided. In other words, if I understood you right, the company has an incentive to economic and efficient operation up to the point where the preferentials provided in the agreement are covered, but after that, they have not the same incentive because then the city comes in. Now, in illustration of that, you spoke of the matter of pension system which might be asked by the employees, that is, employees of the Interborough and the B. R. T. might petition their respective companies for a pension system. Now, there are very many operatives in these companies, very many people, running all the cars and doing strenuous work and hard work. They have many friends in the community, and I think they sympathize with these men who work in the dark most of the time, relieved as it is by the electric light it is still in the dark. Now, what I understood from your testimony was that it might be popularly a very good thing to encourage a pension system for the men. It might be very popular to push out such a thing as that and perhaps some men, anxious to get public applause, might start out and say they stood for a pension system for the men, but on the other hand there would be public officials either elected by the city electors or appointed by men who were elected by the common people, who, realizing that the city is a partner and realizing that the city's interest charges must be met, realizing that the city ought to have its share in this contract, would have to be conservative and stop and say, "Why this

is something we can't agree to at once. We don't see how we can agree to it; it would be a nice thing but it is not good business." On the one hand you would have an agitator with a popular movement, on the other hand you would have the elected officials or their appointees in an unpopular position because they must guard the financial position of the city. Here is the question that I want to ask upon that, because it is like a number of other illustrations you gave. Was that matter considered when the contracts were being discussed? A. Those possibilities were pointed out.

Q. I will ask the same with regard to increase of wages, the same with regard to shortening of hours, the same with regard to general transfers, the same with regard to the quick, reasonable and liberal payment of damages to those that are hurt on the cars. With those things all considered, do you think in the negotiations for those contracts were those things considered? A. I would not be sure as to each specific item but that class of matter was, yes.

Q. That is the possible and probable result of a city co-partnership on the terms of this agreement when considered before it was done. A. Yes, I think those were considered.

Q. Have you a recollection of conferences in which these matters were discussed? A. Well that is the general point of view that Mr. Mitchell and Mr. Maltbie particularly took.

Q. I do not remember reading in Mr. Maltbie's memoranda and opinions or Mr. Mitchell's anything about this matter of pensions? A. I said I would not be sure as to each item, but the general class of items were pointed out. The pension system may not have been mentioned specifically.

Q. Was the question of the increasing of the pay of the men ever discussed as an item by itself? A. Well, I know there was a discussion of the possible problems that would come up of that character, such as increased service, or transfers, or even wages, such problems would come up.

Q. Of course, it is a community benefit for men to receive good wages, and perhaps pensions too, families pensioned, perhaps, but, on the other hand, is the hard pocketbook argument which the city must put forward, because it is a co-partner and which may put its honest, earnest, and zealous officials in the unpopular posi-

tion; was that ever presented, that the men who must guard the city's interests under this contract, may, when they are guarding those interests be put into a most unpopular position before the community, and may even fail in election by the general electorate, because they are protecting the city's pocketbook, was such a thing as that ever discussed? A. I can't say it was, even in that exact or general language, but the general point of view was presented.

Q. Would you say that the memoranda of Mr. Maltbie and of Mr. Mitchell presented substantially all of the objections that were made to the contracts. Do you recall anything more inclusive than those memoranda and opinions? A. Well, there were a number of people who spoke at various times and filed memoranda at various time in opposition, or in criticism of various provisions of the contracts.

Q. Well, if you remember any of those oppositions, which seemed to you to be more complete, or more inclusive of objections than I have mentioned, could you mention them? A. I really have not gone over those Mr. Moss, in a very long time. The general point of view that I presented in that memoranda is the general conclusion that I have had with respect to the problems, which conclusion comes down from the time of the discussion of the contracts.

Q. Can you estimate the annual interest charge the city will have to carry when these subways are completed? A. No, I can not Mr. Moss. It might at it's maximum run into \$6,000.00 or \$8,000,000 a year.

Q. And if that increases the budget, the increase of budget is likely to increase rental is it not? A. It is bound to.

Q. It is bound to increase revenues it is not? A. Yes, it is bound to.

Mr. Smith.—Mr Whitney, you stated that you recognized that the city was a partner in this, dual system; will you tell me what privilege the city has in the transaction? A. As I said, I could not undertake to go into an exact definition of the dual contracts, from the point of view of partnerships.

Q. Can you tell me any privilege that the city has, as a partner

in the transaction, not obligation, but privilege? A. Yes, it gets an enormous development of the city through an enlarged transportation system.

Q. Is that the privilege of a partner, or an incident of the partnership? A. Well, I can not undertake to discuss it in terms of legal partnerships.

Q. You understand what I mean? A. I don't know whether I do or not.

Q. Well, don't you? A. You apparently have given a great deal of attention to partnerships and I have not.

Q. You recognize the fact that each of the partners to the transaction has some privilege, or should have, do you not? A. I suppose he hopes to get a benefit out of the partnership, either financial, or otherwise.

Q. Well, he has a privilege as a partner in the transaction. some privilege of expressing himself?

Mr. Moss.—Mr. Smith, if you will pardon me for a loose thought, it seems to me, that the city's relation to this enterprise might be called that of the well understood angel.

Mr. Smith.—I recognize that fully.

Senator Thompson.—It is just like they work that farm. I don't get any chance to go. He charges up whatever he wants to and takes what he wants, and gives me whatever is left.

Mr. Smith.—I am going to concede Mr. Whitney's weakness on the partnership proposition and ask one or two other questions: Has the question of the increase of Mr. Shonts salary ever been subject to arbitration of the commission? A. No.

Q. Has it got beyond the point where it is subject to arbitration under the contract? A. It has not reached the point where it can be yet.

Q. Is it the intention to require that it be submitted to arbitration, as far as you are personally concerned. A. I decline to answer that.

Q. Has the question of Mr. Shonts \$150,000 bonus ever been the subject of arbitration in the commission? A. No, because it has not been included as a part of the cost.

Q. Is it beyond the point where it may be subject to arbitration under the contract? A. No.

Senator Thompson.—That is where you and the Auditor of the Interborough Railway absolutely disagree, he says it has? The auditor so says, and he has testified before this committee absolutely. That is what it charged and allowed as a prior determination.

Mr. Smith.—Is it your intention to require, as far as you are personally concerned, as a public service commissioner, that it be submitted to arbitration under the contract? A. I decline to answer that.

Q. Has the increase of salary of Colonel Williams ever been submitted to arbitration in the Commission? A. No.

Q. Is it yet beyond the point where it will maybe required to be submitted to arbitration under the contract? A. No.

Q. Is it your intention as a Commissioner to require that it be submitted to arbitration? A. I decline to answer that.

Q. Is it a fact that the bonus to Colonel Williams has ever been submitted to arbitration in the Commission? A. No.

Q. Is it yet beyond the point where it may be submitted to arbitration under the contract and required to be submitted? A. No.

Q. Is it your intention as a Commissioner to require that it be submitted to arbitration before it is finally allowed? A. I decline to answer.

Q. Is the \$100,000 bonus of Colonel Williams a matter which is permissible to arbitration under the contract? In your opinion? A. Bonus?

Q. Yes. A. Well, it can't be the subject, either of objection or arbitration unless it is presented as an item of possible cost of construction.

Q. Is the increase of salary of Colonel Williams a matter that is properly submissible to arbitration in your opinion? A. If it is proposed as a part of the cost of operation, yes.

Q. Is the \$150,000 bonus granted to Mr. Shonts a matter that is properly submissible to arbitration under the contract? A.

If it is submitted as a possible item in the cost of construction, it is the subject of objection and arbitration.

Q. Has it so been submitted, to your knowledge? A. No, sir.

Q. Is the increase of salary of Mr. Shonts a matter that is properly submissable to arbitration under the terms of the contract? A. It is, when it is offered as an item of the cost of operation.

Q. Has it yet been offered in your knowledge and belief as a matter of cost of operation? A. No operation has begun yet.

Q. Does not the word construction also apply as to whether or not it is submissable to arbitration? A. Only if it is offered as an item of construction.

Q. And if any of these items that I have mentioned are offered as items of construction, they are properly submissable to objection and arbitration? A. Yes.

Q. As a Commissioner would you object and require arbitration on each of those items if so submitted? A. I decline to answer that.

Q. (By Mr. Moss.) Do you know whether any part of the Brighton Beach road has been built or is being built by the city, or at the city's expense? A. I think the original four-tracking of the Brighton Beach road from Church Avenue down to Sheepshead Bay was built under a commission provided for by a special act of the Legislature and under that act I think the city did pay a certain amount.

Q. Was it in the neighborhood of four million dollars? A. I can't say, that was before the Commission was created.

Q. Is that road running at a ten cent rate to Coney Island and Brighton Beach? A. It is operated as a part of the elevated system and as such is one of the lines on which the ten cent fare is charged.

Q. Don't you think it will reach thirty-five million? A. No.

Q. Haven't you expressed the opinion that the total would be about two hundred million dollars against the city? A. I was really including in that—I speak of upwards of two hundred million dollars—of course I was bearing in mind there that the city has got over fifty million invested in contracts one and two which were built before the dual contracts were entered into.



Q. That is part of the dual system? A. Yes, but wasn't part of the estimate because it was already constructed.

Q. You don't go beyond your twenty-five million dollars now, but the matter is not formed in your mind. It may increase. A. Well, I don't know. I would rather wait a few days.

Mr. Yeomans.—Mr. Whitney, in your article you stated, and Mr. Moss brought out, that there would not be the incentive after the Company has its preferential for economizing operations that there was before. Now taking into consideration the fact that both the Company and the city share in the visible profits, looking forward to the visible profits, there would be the same incentive to the Company as there had been, would there not? I am speaking of our Company particularly. A. If the Companies were looking forward earnestly for a division of that profit, yes.

Mr. Yeomans.—You know, do you not, that in our case, by giving up our preferential which was based upon the amount we were earning and which was increasing it, that we thereby cut ourselves off for any further increase? We looked forward to our visible profits A. (By witness.) I think there is a likelihood of the visible profits in connection with contract four sooner than contract three.

Mr. Yeomans.—Reference has been made to a payment to Col. Williams of a hundred thousand dollars by the Brooklyn Rapid Transit Company. You do know, do you not, that that never has been made or submitted as a charge to the cost of construction? A. I understood that it has not been submitted.

Mr. Yeomans.—That could therefore not be the subject of controversy between the Commission and the Company or Col. Williams, as it is no part of cost of construction. A. It could not be until it was submitted.

Senator Thompson.—The B. R. T. does not submit to Public Service Commission supervision now, does it?

Mr. Yeomans.—Oh, yes. Under this contract—Oh, no. The B. R. T. is a business corporation but it is not under the contract. The only charges that are in controversy or could be raised in con-

troversy are those that might be charged to cost of construction or operation. A. (By the Witness.) The B. R. T. has been very influential with the Legislature in preventing any enlargement of the Public Service laws so as to give us jurisdiction over Public Service companies.

Q. (By Mr. Moss.) There is a period where the earnings of the subway will be used to meet the preferentials due the railroad companies. After those are paid, then there is a period where the earnings in addition to meeting the preferentials of the companies will be paid over to the preferentials of the city. Now isn't there, in that period in which the preferentials of the city are to be met, a place where there is peculiarly a lack of objective on the point of the Company to greatly economize its expenses? A. There is a period that will involve very great vigilance on the part of public officials.

Q. Mr. Maltbie in his memoranda expressed the opinion that practically there never could be any recapture of the third tracks of the elevated railroad as a practical matter nor of the elevated line in Brooklyn. What is your opinion about that? A. I think the only idea that there ever was with respect to the recapture of the elevated lines of the Manhattan was to guard the situation, wherever at sometime in the future the city might want to take the elevated system, either for operation or to tear down, it could not be able to get a valuation for the value of the franchise of the third-track.

Q. I see. That is all there is to it? A. Yes. As a matter of fact it has been the cause of more mystery than it is even worth.

Q. No practical value is it? A. Unless the city should either want to take the elevated either for operation or to tear down, then it would not be paying for the franchise right value of that third track.

Mr. Yeomans.—Wasn't it a fact that during all the negotiations, the representatives of the city and the Commission and the public wanted two things—one, a single ride for a single fare on each system, and increased valuations of real estate due to the construction and operation of the system. Wasn't that what they were looking for to do? A. They wanted an expansion of transportation, with five cent fare.

Mr. Smith.— Wouldn't the city's two hundred million dollars produce considerable of that expansion of transportation? A. Yes.

Senator Thompson.— Another thing has run through my mind. The initiative in increasing a salary is taken by the Directors of a railroad. Well now, they fix a salary say at \$50,000.00 a year and they don't make any contract. They simply say: "Salary of Jones for Superintendence will have to be \$50,000.00." Does that have to come to you for approval every year or does it continue right on from year to year without coming before the Commission? A. I should say that that would be properly subject to objection any year.

Senator Thompson.— What I am getting at is, when a salary is once fixed could you reduce it unless the railroad took the initiative? A. If it became an unreasonable item of operating expenses I should think it might be subject to an objection.

Q. There is another thing, and that is at the time that these contracts were made, the question occurred to us as to whether or not the expenditure was within the debt limit of the city of New York. A. Yes.

Q. Did you regard these determinations made after the contract is signed, whatever they are fixed at after the contract was signed, was that a part of the expense under the contract at the time of signing the contract? Does it relate back? A. Well, in so far as they are related to the debt limit of the city, the credit of the city is charged as soon as the appropriation is made by the Board of Estimate to carry out a construction contract. You take the prior determination, we will say. Suppose that charged — take the Interborough — charged eight million and a half for cost construction. So far as the subway accounting is concerned, it then became a part of the capitalization, but as a charge against the city debt limit; it was charged at the time when the construction contracts were registered by the Comptroller.

Q. Do you think then, on the 19th of March, 1913, the city, having a debt limit of a hundred million dollars, could incur a debt of a hundred twenty-five million dollars provided that they only paid that debt at such times as the debt limit increased to

cover it, and the contract would be valid? In other words, they could enter a contract for a hundred twenty-five million dollars with a debt limit of a hundred million dollars and wait until the debt limit increased or until some old debts were made? Could a valid contract be made in that way? A. It depends entirely on the nature of that so-called obligation.

Q. These prior determinations — what do you say as to those relating back, being a part of the contract at the time it was signed? A. So far as their relation to the debt limit is concerned, they can only relate back to the date when the particular construction contracts were registered by the Comptroller.

Q. You don't think, then, that those prior determinations were a part of the contract at the time it was signed? A. Bear in mind, Senator, there are two classes of contracts, the dual contracts which were contracts with operating companies and the contracts made with contractors for construction.

Q. I will give you this idea to think about now. Assuming that your debt limit was a certain amount, say a hundred million dollars. At the same time your contract was signed, your contract at that time only carried ninety-five million, but prior determinations made after that were ten million and made the whole contract one hundred and five million dollars. It is a question of validity of the contract itself, whether it occurs there or not, is a legal proposition that you can think over.

Post mortem head lines are a good thing to have in reserve in case a public officer don't do his duty; that is about the only way you can get after him. It is just like sending a fellow to jail after he has stolen some money. A. I don't minimize the value of post mortem head lines. I said that contemporaneous interest was much more important.

Q. It is about the only weapon that the people have to enforce efficiency in public officials, these post mortem head lines. Now the question comes up, here a little while ago I meant to ask you about that. You said something about legislation. What did you mean? Do you mean that certiorari matter? A. Well, for several years there has been a bill in Albany which would have given the Committee increased jurisdiction over holding companies. There was a bill there this year that would have increased the jurisdiction of the Commission over holding companies. It

didn't even get through one House. Then there was a bill that prohibited a review by certiorari in rate and service cases.

Q. Has the Commission found it is hampered on account of the failure of that legislation? A. There are two or three illustrations right now of what would have been the wisdom of passing that bill. The Commission here about four or five weeks ago adopted an order after a very careful investigation and hearings, directing the New York and Queens County Railroad Company to increase its service and specified a schedule in accordance with the decision of the courts that that is what the Commission should do, prescribed the number of cars each half hour that the Company should operate, with further provision that if the Company found, after thirty days' trial that it was unreasonable it should submit the facts to the Commission for its attention. The Company has refused to obey that order and yesterday served the Commission with a writ of certiorari and of course that can't come on for review before the Appellate Division now until fall. It has the effect of completely tying up that order and we can't do anything on the subject of service on that Company.

The Commission in May adopted orders reducing the price of gas in the Second and Fourth Wards of Queens with respect to companies that are operating there on which testimony has been taken over a period of two or three years. The companies have served notice on the Commission that they will refuse to obey the order and propose to apply for writs of certiorari. They will come before the Appellate Division for a stay of the action of the Commission, so as to make sure that we can't catch them either way.

Q. (By Mr. Moss.) What about holding companies? Have you any illustrations in that line? A. We have felt, for example, that it might be well if we had more complete power of requiring reports and power of investigation with respect to the B. R. T. Company and the Inter-Met. We had a bill up there this year amending the Rapid Transit Act that would have given us power of investigation in respect to Rapid Transit matters. My opinion is that two big companies down here took quite an interest in it.

Q. It is an anomalous condition that when you have a right to investigate the companies that are operating you can't investigate the companies that are holding?

Senator Thompson.— I do want to say again, which I have said all the time, that the entire criticism don't fall on the Public Service Commission. A great deal of it falls on the Courts and a great deal more of it on the legislature.

Mr. Moss.— It has been shown by the testimony of Mr. Whitney that we are facing a new situation. What is done is done, but here is a new situation of tremendous importance and if the Committee is getting ready to take hold of it as Mr. Whitney has expressed himself this morning, there ought to be a popular demand down here for the kind of legislation that would give the Public Service Commission full power.

Senator Thompson.— If I was the Legislature, I would give them that power, and then I would let them have it for a year and if it didn't suit me, we would come down and investigate them again afterwards.

Mr. Yeomans.— Col. Williams gets only \$25,000.00. That is the President of the New York Municipal Railway Corporation.

Senator Thompson.— If it wasn't for the existence of these railroads over there, the B. R. T. corporation would not have any excuse for existence, itself, would it?

Mr. Yeomans.— No.

Senator Thompson.— So that there would be no excuse for the B. R. T.; whatever keeps the B. R. T. alive is what these railroads earn. A. There is no doubt about that.

Senator Thompson.— Their vitality is derived from the vitality of all these companies dependent upon the nickels that the people pay for riding on the cars.

Mr. Moss.— Not only that, Mr. Chairman, but may I suggest that right here we have seen that some of these subordinate companies get money from the other companies through these real estate transactions.

Mr. Yeomans.— Not a dollar. There hasn't been shown a dollar that they get.

Mr. Moss.— Mr. Cedarstrom, I want you to state in Mr. Hunter's presence precisely what you said yesterday concerning him.

MR. CEDARSTROM takes the stand.

MR. MOSS.— Go ahead and say what that conversation was when and where, and give the particulars.

MR. CEDARSTROM.— I stated yesterday in answer to the criticism of Col. Williams that the only time that any proposition was made to me, or that had come before me in the matter of employment, was about two weeks after I was retained by the Public Service Commission, when a certain representative of the B. R. T. stopped into my office on Montague Street and said that he understood that I had been retained by the Public Service Commission to make certain appraisals and if I was good enough for the Public Service Commission I was good enough for the railroads, and would I undertake to make some appraisals for the railroads. My answer was that I would not serve two masters. That was the statement I made yesterday. The question was asked who was the representative. I said Mr. Hunter.

MR. MOSS.— Mr. Hunter, what have you to say?

MR. HUNTER, having been duly sworn, testified as follows:

Senator Thompson.— Are you connected with the railroad?  
A. (By Henry F. Hunter.) Yes, sir.

Q. What railroad? A. Brooklyn Rapid Transit System.

Q. What capacity? A. Real estate agent.

Q. (By Mr. Moss.) Now. Mr. Hunter, you heard the testimony of Mr. Cedarstrom. What do you say about it? A. It is false.

Q. What do you say about it? A. It is false, every word of it. I had no such conversation, no authority.

Q. Never mind about the authority. You say every word of it is false? A. Yes.

Q. Do you want to ask Mr. Cedarstrom any questions? He is right there. I suggest that the Chairman give you the privilege of asking Mr. Cedarstrom any questions that occur to you. A. I have heard what he says and I say it is false. That is all I can say.

Senator Thompson.—Where do you say it was? A. (By Mr. Cedarstrom.) At my office.

Q. (By Senator Thompson.) That was how long ago? A. About two weeks after I was retained by the Public Service Commission. About June, 1913.

Q. What were you doing in June, 1913? What was your vocation then? A. Real estate agent.

Q. The same as now? A. Yes.

Q. What salary did you draw? A. Eight thousand dollars a year.

Q. The same as you draw now? A. Yes.

Q. Do you remember calling at his office? A. (By Mr. Hunter.) I was at his office a number of times.

Q. Were you in his office in June, 1913? A. I couldn't say.

Mr. Cedarstrom.—The time that I refer to was the first call that you ever made at my office that I can recall. I don't ever remember your coming into my office prior to that time. A. (By Mr. Hunter.) The first time I called at your office I called at your request.

Mr. Cedarstrom.—I think not, Mr. Hunter. A telephone message? A. I think that was after that.

Senator Thompson.—Did you know him before he was employed by the Public Service Commission? A. I can't state that I did.

Senator Thompson.—But you called at the office after that? A. Yes.

Senator Thompson.—You have an office in the Public Service Commission too? A. (By Mr. Cedarstrom.) No, I was retained at that time by the Public Service Commission for special work, paid by piece work, as it were, so much an appraisal and to give opinions on different properties. It was such work as they referred to me.

Q. (By Mr. Moss.) Not on a salary, but on special employment? A. The proposition as I understand it was that I was appointed but that my total fees were not to exceed \$3,000.00 during the year. That was the sort of an employment at that time.



I had full permission to do any other work. I was doing appraising at that time for different corporations.

Senator Thompson.—What do you say as to Mr. Hunter having called at your request the first time he came there? A. That is his recollection. I know that the first call he made there, I can't conceive how it could be at my request.

Senator Thompson.—Didn't you say it was not? A. I believe it was not at my request. It may possibly have been that I had some transaction that I called Mr. Hunter in, probably he passed on the value or something of that kind.

Senator Thompson.—It was his first call that he had this conversation with you? You never knew him before that? A. I knew him by sight and I knew who he was, but I never had any conversations with him.

Mr. Hunter.—The very first time I came to your office I came in and made that proposition?

Mr. Cedarstrom.—That is correct, yes, sir.

Mr. Moss.—What had you been doing as real estate agent for the Company? A. (By Mr. Hunter.) Charge of the renting, the repairs.

Q. (By Mr. Moss.) Just in charge of renting and repairs. Don't you ever give opinions as to the values of property? A. Oh, yes.

Q. You have done that a good many years, have you not? A. Yes.

Q. Did you ever introduce to the Company any persons to be employed as real estate men? A. No.

Q. Did you ever secure any real estate men to do any work for the Company? A. I may have at the request of the secretary.

Q. Well, at the request of the secretary or in any way, have you done so? A. He might ask me to go and get a certain real estate expert to get a valuation on a piece of property and I obey his orders.

Q. You have done that a number of times? A. Yes.

Q. Did the secretary always specify the man you were to see? A. Yes, sir.

Q. You say the secretary did not tell you to speak to Mr. Cedarstrom? A. He did not.

Q. Who were some of the persons that you did go to? At any time? A. To appraise property for us?

Q. Yes. A. Mr. William J. Morrissey.

Q. Who else? A. That is all that I can remember just now.

Q. Mr. Stearn in the Eastern District? A. No.

Q. Do you know Mr. Stearn? A. No, sir.

Q. Fenwick B. Small? A. Yes, I know Mr. Small.

Q. Well, there have been others, haven't there, that you don't recall now? A. Yes.

Senator Thompson.—Is there anything further you want to say about it? A. Not a word.

Senator Thompson.—Do you want to ask Mr. Cedarstrom questions about it? A. No.

Senator Thompson.—Did you say that there was nobody present only Hunter and yourself when you had this talk?

Mr. Cedarstrom.—I had two young ladies at the office at the time, but they were at the other end of the room. It was a very large room.

Mr. Yeomans.—You were at that time in general appraisal business, weren't you? A. (By Mr. Cedarstrom.) Yes, doing business for anybody and everybody.

Mr. Yeomans.—You had not tied yourself up exclusively at that time? A. Absolutely not. It was about six months later when I tied up absolutely with the Public Service Commission. I simply referred to this as an indication that the B. R. T. wanted my services rather than my wanting the B. R. T.

Mr. Yeomans.—Did you ever instruct Mr. Hunter to see Mr. Cedarstrom about any such matter?

Secretary.—Absolutely not.

Mr. Smith.—Did you ever give him the privilege of going to any real estate man? A. I often instructed him to do that.

Q. (By Mr. Smith.) You recognize his general right to assist

you by getting appraisers whenever he could? A. He must not do it unless I give him authority to do it.

Q. Well, if he brought the name of some person who could efficiently assist in the appraisal of a piece of property, you didn't criticize him or discipline him for it, did you? A. If I approved of it, all right.

Q. But you didn't discipline him even if he took the initiative?

Senator Thompson.—Does this man have any general authority? A. No.

Senator Thompson.—So far as the question of the valuation of real estate is concerned he is a sort of Micawber waiting for above witness J. H. Bennington.

Mr. Moss.—Have you presented items to the Public Service Commission or any employee thereof for expenses to be charged to construction? A. (By Mr. Hunter.) I present bills for expenses. I don't know how they are charged.

Q. Bills to the Public Service Commission or to be passed on by the Public Service Commission? A. No, I present them to the Company.

Q. Do you know whether any of your bills have been presented to the Public Service Commission to be passed on? A. No, sir. I do not.

Q. Do you know that any bills which you have presented to the Company were to be passed on by the Public Service Commission? A. I presume they were.

Q. What were these bills for? A. Well, for general expenses.

Q. What kind of expenses. A. Such as repairs.

Q. Repairs to what? A. Buildings.

Q. What kind of buildings? A. One family and two family houses, tenement houses.

Q. Who owned the buildings? A. New York Municipal Company.

Q. How do those matters get before the Public Service Commission? What kind of matters were they? A. I don't know.

Q. How were they charged? To construction? A. I don't know.

Q. What were the repairs? A. Carpenter work, etc.

Q. Where were the houses? A. In parts of the system.

Q. Were they occupied by tenants who paid rent? A. Yes, sir.

Q. Who did they pay the rent to? A. The Treasurer.

Q. Of the Municipal? A. Yes, sir.

Q. Well, is the title of those houses in the B. R. T. or the New York Municipal? A. In the New York Municipal.

Q. When were they bought? A. At different times, I could not tell you just when.

Q. How many are there? A. Forty houses.

Q. Is it your special business to look after those houses, after their repair and the collection of the rents? A. I have nothing to do with the collection of the rents, sir.

Q. How long has the B. R. T. or Municipal had them? A. Since 1913, I think. I could not tell you just exactly when we got possession of them.

Q. Do you know how they got possession of them, under what circumstances? A. Yes, sir.

Q. Tell me. A. Bought them from the owners.

Q. How did they come to buy these houses from the owners? A. Because it was necessary for the construction of the road. Most all of the houses are along the Sea Beach line. A great many of them are in East New York.

Q. Then in buying land for the railroad purposes, construction purposes, under the dual contract, I suppose, they bought these houses from the owners. A. Yes, sir.

Q. And they have been collecting the rents from them ever since and the bills for repairs have been charged up to construction and have been submitted to the Public Service Commission for approval? A. I presume so.

Q. The rents go to the New York Municipal, I suppose. A. I don't know.

Q. You turn them over to the Treasurer? A. I don't touch them.

Q. Who collects them? A. The Treasurer.

Q. Don't you know who collects the rents? A. Who collects them for the Treasurer?

Q. Yes. A. A man by the name of King.

Q. What is his first name? A. I don't know what his first name is.

Q. Where is he to be found? A. At the Treasurer's office.

Q. Do you know whether these bills have been allowed by the Public Service Commission? A. I do not know.

Q. Do you mean to say that you don't know? A. How would I know?

Mr. Cedarstrom.—May I make a little statement here if you please? In mentioning this incident or fact, there was no intention on my part to cast any reflection on Mr. Hunter. It was simply in answer to Col. Williams' statement that I wanted to get with the B. R. T. I didn't think anything of it except that I thought that it wasn't just the proper thing for the railroad to ask me when I was retained by the Public Service Commission. I had no idea at the time that Mr. Hunter had any other motive than that he thought I—

Mr. Moss.—There is no need of your being so careful of Mr. Hunter, because he says you are a prevaricator.

Senator Thompson.—The Committee learns a great deal more when you and Mr. Williams are in the state of mind you were yesterday.

We will suspend until 2:30.

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**JUNE 9, 1916.**

AFTERNOON SESSION.

SIEGFRIED CEDARSTROM was called as a witness, and, having been previously sworn, testified as follows:

Q. (By Mr. Moss.) When you first began to have negotiations and dealings with these routes down there in the neighborhood of Gravesend Avenue, what was the first figure that was mentioned to you? A. The easement from Tenth Avenue down to Avenue X, one million dollars approximately.

Q. One million dollars? A. One million dollars.

Q. Who mentioned that tidy sum to you? A. Mr. Bennington.

Q. What was that for? A. It was for an elevated railroad easement extending on over the private property of the Railroad Company from Tenth Avenue to Fifteenth Avenue and then on to Gravesend Avenue; from Gravesend Avenue down to Avenue X over the right of way that was claimed to be in the fee ownership of the railroad.

Q. Well, how did it work out from that original proposition? A. It was eliminated from Gravesend Avenue to Avenue X, and the Public Service Commission were to receive that for nothing, as I understand it, and \$200,000 was paid on the right of way over from Tenth Avenue to Gravesend Avenue.

Q. What did the million dollars finally whittle down to? A. \$200,000 for that part of it.

Q. Was that the result of negotiation? A. It was the result of negotiations, and I think probably calling Mr. Bennington's attention to the fact that the similar land to that lying within the lines of Gravesend Avenue down to Avenue X had been declared by the Supreme Court to have no value.

Q. If you hadn't called his attention to that, I suppose the matter might have gone through at a million dollars? A. I don't know. I don't and didn't think there was any great value to it myself.

Q. Will you indicate there the limits of the city-built line at Avenues X and Y? (Opening two-colored map.) Those are the termini of the city-built line which is shown in red on the map? A. Yes, sir. There is a station here, part of a station, I believe, is city-owned. It is colored in blue here, but I believe that is city-owned and should be red.

Q. The city-built line does not go to Coney Island at all, does it? A. No, sir, it does not. It stops here.

Q. And it depends upon the New York Municipal or subsidiary lines to get down to Coney Island? A. Yes, sir; the New York Municipal was furnished a right of way over the Nassau track here. They submitted a proposition for leasing, and in addition to that they will construct from that point here, and all will

be a charge against construction, with the price that they pay the subsidiary company for the lease and also construction, and the station will be a part. Two of these here will be city-owned, so that if the Public Service Commission or the city later on determine to recapture here, they may then run down here and they will have these in connection with their other construction. This, as I understand it, is not subject to recapture.

The point that I made was that at such time later on, if they should go ahead and construct Stilwell Avenue, there would be considerable condemning of real estate along there.

Q. Do you mean you objected to having the Stilwell line swing around to Avenue Y and run on private property? A. In other words, the New York Municipal furnishing the right of way and constructing it.

Q. Where the city might as well have constructed its line down Stilwell Avenue and then got into Surf Avenue. A. One objection that was then raised was that the city would then have to contribute this money for the construction of this line, whereas if the New York Municipal leased the right of way, the city wouldn't have to contribute any money towards it.

Mr. Woody.—The contract provides for that.

Mr. Cedarstrom.—The city may go down Stilwell Avenue and build its own line, or the New York Municipal to furnish the right of way, and if the New York Municipal furnishes the right of way, the construction cost is charged against the construction account and carries 6% against the preferential, but in furnishing this right of way, they leased it from the subsidiary company.

Mr. Yeomans.—You would have to have an extra bridge on Stilwell Avenue.

Mr. Cedarstrom.—The bridge on Stilwell Avenue, I believe you have charged into your cost of construction on your trolley line there, and that was one of the items that we objected to. There would have to be a bridge built there anyway because the street will be legally opened by process of condemnation. You still build a new bridge over the other; it is a charge against construction and carries 6%.

Q. (By Mr. Moss.) Now, as you understand it, this red here

shows the city-built line and the blue shows the private lines? A. (Mr. Cedarstrom.) The red lines, as I understand them, show the city ownership, and the other lines here show the elevated railroad and railroad ownership.

Q. Now, as a practical matter, supposing the city wanted to build just what subways were necessary within reason as to expense, what seems to you to be the advantage of the city building these red lines at all when this territory is so well served by the blue lines? A. But, the city doesn't build these blue lines; the railroad pays the cost of construction on that.

Q. That is just what I said. These blue lines indicate the private railroad. They were running before. Now, the city comes in here with this red structure, all running down to this same point at Coney Island. If you were looking to the economical use of the city's funds in devising a great subway system, could you imagine that Coney Island might perhaps have been pretty well served without these city-built lines? A. It is a matter of opinion, and I can only analyze that just from a real estate owner's standpoint. It would seem to me that the probabilities are that some of the city construction might have been eliminated. That is just simply my own opinion. I never took any part in the subway negotiations while they were pending, and I don't know what entered into the minds of the different people when they laid these different lines out along here, or whether it was a compromise or not.

Q. Of course, this connects with the Fourth Avenue line? A. Yes, sir.

Q. Now, a great deal has been said about the Fourth Avenue line. Will you indicate where it connects? A. It comes in at Flatbush Avenue at Fulton Street, at this point here.

Q. Will you show the point where it would appear from the testimony about a million dollars was expended in changing the route? A. I think it comes in somewhere at about that point there.

Senator Thompson.—That is a million dollars for the right of way? A. Yes, they have spent a lot more money to bury that right of way underground.

Mr. Moss.—The right of way costs a million dollars and we have been informed by testimony that it cost a million dollars



to change the plans and the construction of the railroad that had already been charged.

Mr. Cedarstrom.—The million dollar estimate that you are talking of begins at Fourth Avenue and ends at Tenth Avenue.

Mr. Moss.—Now, referring to this Fourth Avenue subway, Mr. Whitney this morning spoke of the usefulness of the subway in developing the values of the property, increasing the taxable values and thereby raising the debt limit. What has been the effect of the Fourth Avenue subway upon real estate values? Have they increased? A. I don't think that the Fourth Avenue subway itself has materially increased any valuation along that particular route from Flatbush Avenue to 86th Street. I haven't seen any indication of it as a whole.

Q. The Fourth Avenue subway was constructed early. In your opinion, in what direction could a subway have been constructed which would have immediately increased real estate values? A. It seemed to be the consensus of opinion at the time the Fourth Avenue subway was talked of, among real estate men at our real estate meetings that Eastern Parkway would have been the proper line to have constructed first.

Q. That would have increased values? A. Yes, and it would have opened up a vast territory there, and in addition to that have a connection between Franklin Avenue and Nostrand Avenue, Kingston Avenue and Sumner Avenue and Reid Avenue and Ralph Avenue and different streets there that would have opened up additional territory. We thought that would be the logical subway to construct first, but the Fourth Avenue was selected.

Q. Were there real estate interests which were calling for the construction of the Fourth Avenue subway first? A. I think the real estate owners in Bay Ridge—in fact, I know, they were a unit as to that, and I know that a number of them have gone in and had options on properties and bought properties and put their all in it and advocated the building of that Fourth Avenue subway.

Q. Did those people make or lose money? A. I think with hardly an exception they have gone broke. I know a number of individuals there—I don't want to mention their names—who advocated the building of that subway and who thought they were

going to retire on the profits that they would make on real estate who have lost all of their holdings.

Q. Now, while we are on this line — in order, as it was declared, to create debt margin out of which subways might be built, the real estate valuations were greatly increased under Mayor Gaynor? A. Yes, sir.

Q. They were increased under a publicly announced program. Do you remember what was said at that time about the principle of that increase? A. Yes, I was given Mayor Gaynor's version of it, and it seemed to my mind rather reasonable, and that was, that it didn't make any difference whether all of the properties of New York City were assessed at 100% of their value or 200% of their value, for the reason that the net taxes that each owner would have to pay would be the same. In other words, if they assessed all the properties at 150%, 200%, 250% or 500% more than they were worth, the taxpayers would be decreased correspondingly, each individual owner, and he would have the same net taxes to pay.

Q. But one result, and the result aimed at would be the increasing of the valuation of the city and the enlarging of the debt limit? A. Mayor Gaynor, as I understood it, thought that it was justified to go a little beyond the tax law which said 100% in order to create a borrowing capacity whereby the city might build these subways themselves. It was on that theory and method that the taxes were increased during the year 1911 to some \$900,000,000, the tentative assessment.

Q. How did it work out? A. Like all theories when they run up against the facts, they usually explode.

Q. What was the fact? A. The net result was that large realty owners who were in a position, could afford to go into certiorari proceedings, had their tax valuations reduced, as the law provided for it, and the small owners of property to whom the cost of prosecution would probably be greater than the saving in taxes had no redress and their assessments remained so that the large owners received the benefit of the small tax and the small owners carried the burden, as they usually carry it in all places.

Q. Of the heavy valuation? A. Of the heavy valuation and increased tax rate. I think Mayor Gaynor recognized that before he died, because I think he did make an honest attempt to correct

the assessments. I don't think the assessments have ever been corrected since that time as far as small owners are concerned. I say that advisedly after a close study of the tax situation.

Q. What can you say about the recapture provision as it affects the Fourth Avenue subway? A. Really, I don't know enough about the subway contracts to discuss that recapture very intelligently. I think that there are others on the Commission who know far more about it than I do. Personally, I don't think that it is an asset to spell anything but a nominal value to it so far as the city is concerned.

Q. Well, what is the reason? A. I say I can't go into that in detail the way it should be gone into, but I think, as I said before, there are others in the Commission who could do that. That is my opinion based on generalities and what I know.

Q. Is that an opinion that you have heard expressed in the Commission? A. No, I wouldn't say that, but in realty circles we frequently have discussed it and we seem to think that recapture is prohibitive, but I couldn't go in and analyze that.

Q. That is an opinion that real estate men hold? A. Absolutely, we have no hope that the city will recapture.

Q. I wish now you would detail the various real estate transactions which you began and have not completed which grew out of these negotiations. A. I think the first transaction on this line here was the water-front at 39th Street and 40th Street, at this point.

Senator Thompson.— Before you go into that, I have been looking at the descriptions of these railroads. From the descriptions contained in Contract No. 4, it seems to me as though it would carry it right down to Surf Avenue, both the Culver Avenue line and the New Utrecht line. It seems to so describe it in Contract No. 4 at page 15. How could they stop where they did?

Mr. Cedarstrom.— There is another clause there that gives the city the option.

Mr. Woody.— I will find the clause. You had better go ahead; it will take me some time to look it up.

Mr. Cedarstrom.— The first one was about 40th Street and Second Avenue; the next one was the blocks between 39th, 40th

and 41st, Second to Third Avenue, and a right of way from Third to Fourth Avenue.

Mr. Bennington.— You refer to the 39th Street terminal?

Mr. Cedarstrom.— Yes, I am referring to the properties along the Gravesend Avenue route and the Stilwell Avenue route, especially in connection with the yard and the acquisition in connection with the Fourth Avenue Culver line. Those are the two first we had.

Mr. Bennington.— The two first we had were down at 39th Street Ferry; one was the dock property and the other was the yard property. That isn't near 40th Street.

Mr. Cedarstrom.— Where does that come in?

Mr. Bennington.— That comes in between 37th and 39th Street, Second and Third Avenues.

Mr. Cedarstrom.— That is where I made the mistake. It was those two blocks, and then a right of way to Fourth Avenue, and the next one I think was that \$150,000 sloping bank. The next one I think was the Seventh Avenue and 39th Street, the corner which you wanted \$12,000 for. I recommended \$7,500. The Commission sustained me, and we have had a referee appointed. We have had to go into condemnation on it.

Mr. Bennington.— Yes.

Mr. Cedarstrom.— Then, we had some elevated railroad easements at 86th Street that have never been settled.

The next one was the Culver line, the overhead easement over the private right of way down to Avenue X, Gravesend Avenue.

Mr. Bennington.— We only discussed it as far as Kensington Junction.

Mr. Cedarstrom.— Why —

Mr. Bennington.— We agreed to give you our consent for nothing on Gravesend Avenue so far as the South Brooklyn Railway Company was concerned.

Mr. Cedarstrom.— The tax department have that land assessed in fee.

Mr. Bennington.— There is a letter on file in the Public Service Commission's office — I think it was addressed to Mr. Willcox, who was then Chairman of the Public Service Commission — stating that the South Brooklyn Railroad Company would give its consent so far as it was concerned.

Mr. Cedarstrom.— That was dug up afterwards. During our last conference on this thing, Mr. Bennington thought that Colonel Williams had given up a valuable easement there for nothing that should have been paid for.

Mr. Bennington.— Yes, I still think so. I think he gave you some money for nothing.

Mr. Cedarstrom.— But we got it nevertheless, so we will give him the benefit on it, give him the benefit of the doubt.

The next transaction, I think, was Brighton-by-the-Sea.

Mr. Bennington.— I don't think you and I discussed that very much, did we?

Mr. Cedarstrom.— No, we didn't discuss it very much, but we discussed it for weeks over there at the Commission, and they had me on the rack there sometimes for a week at a time every day.

Then followed the next one between Avenue Y and Surf Avenue. We had nothing to do with that except prove your purchase from Ocean Parkway to Stillwell Avenue along the right-of-way.

Mr. Yeomans.— You did approve an agreement there by which the New York & Coney Island gave without a consideration the right to the New York Municipal to build that double-deck track.

Mr. Cedarstrom.— That is right on that. I think that covers it, doesn't it, Mr. Bennington? You don't think of anything else, do you?

Mr. Bennington.— I can't so far as those lines are concerned.

Senator Thompson.— This blue on the map is all property that belongs to the railroads, and your city-built line stops up here at

Avenue X and Avenue Y. What in the world do you do down here buying real estate?

Mr. Cedarstrom.— We weren't buying it. This was a case of the New York Municipal Railway Company acquiring real estate for the purpose of running these tracks across here. All we had to do was to approve the purchase price, because it was charged against construction.

Senator Thompson.— Yes.

Mr. Yeomans.— There was a terminal being built there from Stilwell Avenue over to Brighton Beach.

Senator Thompson.— What has the City got to do with it?

Mr. Yeomans.— It is just the same as the New York Municipal construction—it is the terminal for all these lines.

Senator Thompson.— What has the city got to do with it?

Mr. Yeomans.— They have to approve the cost of construction.

Senator Thompson.— I can't understand how the City is interested.

Mr. Woody.— May I say that under the contract, for instance, some of this railroad was on the surface, and the City wanted us to four-track it and elevate it. We agreed to do that in this contract and make all these improvements. This is charged to the cost of construction.

Senator Thompson.— Of what?

Mr. Woody.— The whole dual subway system.

Senator Thompson.— So that you are getting then out of the dual subway contract help from the City in constructing these roads down here.

Mr. Woody.— We build that out of our own money.

Mr. Yeomans.— We furnish the money out of our own bond.

Mr. Cedarstrom.— It carries 6 per cent. against the preferential on every dollar that they expend.

Senator Thompson.—Does the City get any part of the earnings over these tracks here?

Mr. Yeomans.—It is all the same—

Mr. Moss.—They build it with their own money, get paid for it out of the income and then own the property.

Senator Thompson.—There is no right of recapture?

Mr. Yeomans.—No. The City doesn't pay for it; the City gets its money back.

Mr. Cedarstrom.—Before there are any profits, your money is deducted first. There can't be any profits unless you collect your interest first on it.

Mr. Cedarstrom.—The reason that these construction accounts are checked is to keep down the interest charges.

Senator Thompson.—You pay for it out of the amortization, of course.

Mr. Cedarstrom.—If we can save \$100,000 on it, it means \$6,000 a year more profit to the City, if there is any profit.

Senator Thompson.—Your interest doesn't cost you only 5 per cent. and you get one per cent. for amortization.

Mr. Yeomans.—That 1 per cent. will amortize both the City investment and the Company's investment for 49 years.

Mr. Smith.—Your City lines are no good without the Company lines, but the Company lines are serviceable without the City lines.

Mr. Yeomans.—That is why the City wanted to build those two lines to Coney Island, so that it would have its two lines; in case it took over any of the extension, etc. it would have a complete system from New York to Coney Island.

Mr. Moss.—There are four lines going down there, two city lines and two private lines.

Mr. Yeomans.—They have a right of way there.

Senator Thompson.— When you get to the end of this road, why the passengers on the City line can get off and walk.

Mr. Cedarstrom.— As a matter of fact, on the recapture, we only go to that point there.

The Public Service Commission reserved the option on these to run the line down themselves or the New York Municipal. When I first read that clause that the New York Municipal would furnish the right of way, I thought we were going to get it for nothing. I was kind of flabbergasted a bit when the charge came in for \$300,000.00 for the lease of the right of way.

Mr. Yeomans.— The contract provided for that.

Senator Thompson.— I was in error about that. I understand it now.

Mr. Yeomans.— What happened was that the City had a route laid out all the way to Coney Island as a subway which would have cost five or six times as much.

Mr. Smith.— What limitation is there on the cost of construction?

Senator Thompson.— There isn't any limitation.

Mr. Yeomans.— It has to come under—

Senator Thompson.— The limitation from time to time is put on according to the Public Service Commission's approval or lack of approval.

Mr. Smith.— What has got me is what is the limitation on the magnificence of the construction that you might put there under this contract.

Mr. Yeomans.— The Engineers of the Public Service Commission pass on the plans.

Mr. Cedarstrom.— And the Public Service Commission approves them. Another point I would like to call your attention to. One reason that we try very hard not to spend any more money for real estate than is absolutely necessary is that over and above a certain amount if there is any deficit the city has to contribute,



and whenever they pay two hundred thousand dollars for a right that should be acquired for fifty thousand dollars, that means that the city has increased a hundred fifty-thousand dollars more than it should, carrying an interest of 6 per cent. is five thousand dollars a year, and if there is a deficit on the subway account, it has to be added to the budget and the taxpayers as a whole have to pay it.

Senator Thompson.—What is your limit of contribution toward the cost of construction?

Mr. Yeomans.—Thirteen million dollars and the cost of the Canal Street connection up there.

Senator Thompson.—The city pays the rest?

Mr. Yeomans.—Fourteen million.

Senator Thompson.—The city will pay more than you pay?

Mr. Yeomans.—We put sixty-five million dollars into our own re-construction.

Senator Thompson.—I am talking about the construction of extensions under these contracts.

Mr. Yeomans.—We built the only extensions there are.

Senator Thompson.—But your contribution is limited.

Mr. Yeomans.—So far as the city lines are concerned, we put in about one million and a half.

Senator Thompson.—And the city pays the rest?

Mr. Yeomans.—Yes, sir.

Senator Thompson.—And the city's share will exceed thirteen million dollars?

Mr. Yeomans.—Yes.

Senator Thompson.—If your contribution is limited and theirs is unlimited and you are going to build to twice the extent of your contribution and more, the city has to pay it? You said during temporary operation while all the lines are going and there are

bonds issued on that for the city, after construction if there is any deficit on the operation for this proposition as a whole, it will be added in the budget?

Mr. Yeomans.— Yes.

Mr. Cedarstrom.— If there is any deficit on interest, the taxpayers will have to pay it. That is the reason we are interested here in holding down these different items. I, as a real estate man, am particularly interested.

Mr. Yeomans.— That is why the city was interested also in getting the increased valuation.

Mr. Smith.— To what extent have they held them down as compared with the original estimate of these constructions?

Mr. Cedarstrom.— I am not in a position to say that. I have little or no knowledge on that score. My field is real estate and it takes all the time and a little more than I can give to it.

Senator Thompson.— The suggestion has been made then here, why stop at Y. and at X on this algebraic system? Now when you do come down here and your 49 years has gone by and there are the same laws as at present, I understood Mr. Cedarstrom to intimate that the city could not condemn any route here on Surf Avenue because the property was subjected to a prior public use.

Mr. Yeomans.— His idea was that being built up, it would cost more to get it—

Mr. Cedarstrom.— The question along that line was asked me, Mr. Yeomans, and I said this: that a two level elevated railroad had been approved from Ocean Parkway to Stilwell Avenue, a double level, two tracks, two level or double level, from Ocean Parkway— well, it doesn't start exactly at Ocean, but about West Third Street to Stilwell Avenue, and then you intend, as I understand, to run on down—

Mr. Yeomans.— There isn't any arrangement for that yet.

Mr. Cedarstrom.— You run down to Sea Gate here. There is no way that I can see that we could cross your two level elevated

track. We could not go underneath it, it would be prohibitive. We could not go over it and across on the same level there would not be good operation.

Mr. Yeomans.—It will only be one level from Stilwell Avenue down.

Mr. Cedarstrom.—So far as the Culver line is concerned, there is absolutely no question that we will have to stop back of your two level structure there and in other words, after the construction of this two level here, it is practically impossible for the city to make a union between their Culver Avenue line and their Stilwell Avenue in case of recapture at some time.

Mr. Yeomans.—The point of this, the New York Railroad owns the right of way there, and it gave the New York Municipal the right to make this construction there. I don't know what the physical obstructions that would be overcome by engineers as far as the legal obstruction is concerned there is no legal obstruction that the city, under the Rapid Transit Act could do as it wants.

Mr. Cedarstrom.—I have had some propositions before me and it has been determined by engineers that it is not a practical thing to run across on the same level with an elevated railroad, especially on a curve.

Mr. Bullock.—If they physically can't get where they want, I believe they could condemn a right to use that terminal.

Mr. Moss.—If they could it would be a most expensive operation because it would ruin the structure, back and forth.

Senator Thompson.—Here is a contract made with the public that they can erect these particular structures here—not only made by you but with the assistance of the public,—of erecting these structures and railroads at these particular points so as to prohibit, in the future, the erection of other ones.

Mr. Yeomans.—We never proposed that, I mean the city not owning either of those routes, had never proposed to connect—

Mr. Cedarstrom.—But the Public Service Commission had the

option here to either construct their own line in the Surf Avenue or furnish the right of way. Now, if the Public Service Commission had elected to build their own structure, there would be nothing to prevent coming down Shell Road here, through private streets, West Sixth street and West Eighth Street, and going into Surf Avenue and making a union. There was nothing to compel the Public Service Commission to make a two level elevated road here. They could make that one level and could arrange this so as to go over that, or made yours a two level and then go onto yours. That proposition has been considered in the Public Service Commission. The reports in the Public Service Commission show that the one level structure that you wanted to build there was approved from an engineering and operating standpoint by the engineers, Chief Engineers and from a real estate standpoint by myself. The question that Col. Williams raised was that there would be an enormous saving in the real estate account and in addition to that that any railroad plan could be used and we could use more under this double deck proposition than the single deck, and that would be given to us for nothing, but as far as that being approved by the engineers' force, and by others who had to pass on it is not a fact, the Public Service Commission did approve your two level.

Mr. Smith.— And in approving it, they lost their opportunity, practically.

Mr. Cedarstrom.— Of course, so far as Stilwell Avenue is concerned, that is settled. So far as Shell Road is concerned, the Commission hasn't determined yet as to whether the railroads should furnish the right of way or we should go down private streets.

Mr. Moss.— Now suppose we start where you indicated the first train comes.

Mr. Smith.— I thought Mr. Yeomans wanted to take up this thing at the other end.

Mr. Cedarstrom.— You asked me yesterday to bring some data and memoranda.

Mr. Moss.— Will you indicate some street or monument there that you can get on this record so that we will know what we are talking about?

Mr. Cedarstrom.— From Avenue Y along the Nassau right of way to West End Terminal, Avenue Y and Stilwell Avenue to the West End Terminal, Stilwell Avenue to a point some hundred and fifty feet north of Surf Avenue. I find, Mr. Yeomans, my original memorandum here shows that my land value for the three parcels, one, two and three, which this map is divided in, is \$167,473.00. I allowed one-third for the rights to be acquired of that amount which was \$55,826.00, I made it in round figures and approved to the Commission that an amount of \$56,000.00 be allowed on that. I find that Mr. Bennington figures for the land \$302,300.00 and you allowed one-third at the same basis that I did in that case for the easement, and you allowed one hundred thousand dollars for the land. Then you allowed \$200,605 for the track, which made \$300,605.00 which was the amount mentioned in the agreement that was submitted to me for approval and which was before the Commission. I don't know whether I can give you the final result or not.

Mr. Yeomans.— It was \$226,000.00.

Mr. Cedarstrom.— That is what I thought. The item of \$200,605.00 was made up of the following amounts:

\$25,775.00 for track and overhead work on Stilwell Avenue,  
 4,320.00 for South Branch,  
 2,605.00 for Cross Labor,  
 30,000.00 for a Draw Bridge,  
 39,940.00 for a new track and paving,  
 30,000.00 that was capitalized amount to take care of the paving  
                   between the tracks and two feet on either side  
                   of the track in perpetuity.  
 62,175.00 the cost of improvements on the property. It was  
                   estimated that the tracks, overhead wires and  
                   things of that kind would be that, and  
 5,790.00 the cost of labor on tracks East of Number 2, the

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\$200,605.00 Total.

Mr. Yeomans.—Those figures covered the transference of the Nassau Railroad over to Stilwell Avenue and were agreed to by the Public Service Commission's engineers. The whole question was as between the value of the real estate, was not that so?

Mr. Cedarstrom.—No, sir. That was not.

Mr. Yeomans.—The engineers approved the figures finally.

Mr. Cedarstrom.—Contrary to those figures in nearly every instance.

Mr. Yeomans.—I say that finally they came to an agreement as to what it should cost. When they got to the final arrangement, the cost of transferring the tracks over to Stilwell Avenue and putting the Nassau in shape, and as a matter of fact since then the cost of this bridge has been so much more that we are practically getting nothing for that real estate.

Mr. Cedarstrom.—Any time that you get nothing—Now, as a matter of fact there was an agreement approved which allows—. There was a resolution in May, 1915, which was passed, wherein it was stated that this application had been submitted to the Public Service Commission for acquiring this right of way and cost \$200,605 and the resolution made certain changes in the contract and it changed the amount to be charged to the cost of construction not to exceed \$226,000.00. Of that \$226,000.00 the Public Service Commission excepted my figures of \$56,000.00, and they exempted from any charge on this right of way taxes to be apportioned between the lessor and lessee, which was not in the lease. In case of Street option and easements for benefits, the Nassau electric railway should pay the amount of assessment. If the amount of the assessment exceeded the amount of the awarded balance, it should be proportionately rated and borne by the lessor and the lessee. If the lease should be for 999 years, the original I think was for a term of 99 years, the New York Municipal Railway Corporation will make such changes in form as will meet these requirements. You ask for the approval of \$200,605.00 and you asked \$100,000.00 for real estate and my figure at \$56,000.00 was accepted.

Mr. Yeomans.—\$100,000.00 of the \$300,605.00 was real estate, not in addition.

Mr. Cedarstrom.— Yes, so that it was \$176,605.00 made up of the other items. Now at that same meeting, when my figures were accepted on this proposition here, \$56,000.00, they also approved my figures of \$7,500.00 on the piece of property that you wanted \$12,200.00 for at Seventh Avenue and 38th Street. They also approved —

Mr. Yeomans.— They said \$85,000.00 and \$10,000.00 was agreed upon.

Mr. Cedarstrom.— I am speaking now of Seventh Avenue and 38th Street; was \$12,000.00 and they approved \$7,500.00.

Mr. Yeomans.— One meeting they made \$10,000.00 and afterwards they changed it but you are right about the final result.

Mr. Cedarstrom.— But at that same meeting, when this was approved, they approved that.

Mr. Yeomans.— That is to be condemned now by an outside lawyer.

Mr. Cedarstrom.— At the same meeting the \$50,000.00 was eliminated, it was approved at \$50,000.00 at that meeting, and then later on it was made \$85,000.00, when the reports of some of the men went in there and you refused to take the \$50,000.00.

Senator Thompson.— I would like the Public Service Record put in this record on that.

Mr. Cedarstrom.— So far as this right of way was concerned, I made some objections to some of these engineering items. Now, for instance, here is a strip of land. There are two railroad tracks running in to Coney Island and some old buildings here. Stillwell Avenue, here, already has trolley tracks, so they had acquired that right prior to the street opening proceedings. Now, they wanted to be paid in addition to the real estate, examination of values of real estate, for all the tracks and other connections, and the bridge across the creek, there, and in addition to that we

should pay for the temporary tracks, and then a complete trolley road from Avenue Y in to Coney Island, including tracks, paving, overhead wires and such other necessary accessories to complete it in every detail, and the paving there, that should be capitalized so that amount would take care of that for good. It seemed to me, and I so reported, that there was every indication that they intended to use Stilwell Avenue for a trolley line and that would be the natural thing to do.

Senator Thompson.— Is your suggestion there that the city will lay out a street along a railroad track?

Mr. Yeomans.— The proceedings were opened, but we were to operate both trolley cars and these elevated subway trains on the same track. Now, the Nassau Company had that right of way down there and it was arranged that they should remove their trolley service, have no trolley service on that right of way, and move their trolley service over on the Stilwell Avenue.

Senator Thompson.— But he says that you have got away from the payment of the franchise tax.

Mr. Yeomans.— We had a right there before —

Mr. Woody.— It was private property.

Mr. Cedarstrom.— As —

Senator Thompson.— You had some railroads on private property. Do you mean to tell me that the city will lay out a street along railroads already existing? You go out and lay out a track along private property where you think some day is going to be a street?

Mr. Cedarstrom.— It was on a proposed map to be adopted some future date. My point is this, that if we constructed our point down Stilwell Avenue, the engineers agreed on this, if we construct our own line down here, that they would still use this for a trolley track and they would build their own trolley track. We could not see why we should pay for that. It is just the same as buying a man's house and land and then paying him to build the house somewhere else afterwards. That is the way we looked at it. However, the result was that there was a difference there.



Mr. Yeomans.— Do you remember, Mr. Cedarstrom, that our engineers found that they could reduce that charge considerably?

Mr. Cedarstrom.— I remember that there were numerous items which were ruled out as not being proper there, and when we deducted those, that there was a considerable difference.

Mr. Yeomans.— But there was a new scheme found which was much less expensive, I mean to say twenty-five or thirty thousand dollars, on the part of the engineers and that was cut out.

Mr. Cedarstrom.— I know that there were numerous items that you calculated and I know that the engineers' report cut every one of your estimated value for all of these items, and I cut the real estate.

Mr. Moss.— You see they get it both ways, when it is cut out then they are done, when it is not cut out, then Cedarstrom is done.

Mr. Cedarstrom.— There was a net reduction of possibly eighty-five thousand dollars.

Mr. Woody.— Mr. Cedarstrom, there is a lot more land to be acquired down there, isn't there? A. (By Cedarstrom.) Where?

Q. (Mr. Woody.) Well, along this route going into Ocean Parkway. A. Yes, but the New York Municipal acquires that.

Q. And you have to approve that? A. Yes, sir. The Public Service Commission has to approve it, but they take some note of my recommendation.

Q. The railroads have got appraisals and their experts have recommended certain purchases at certain prices and you have refused to approve? A. Yes, sir.

Q. And these experts of the railroad company have said to you that that is the lowest price that it could be purchased for? A. Yes, sir.

Q. And they have said that in their opinion that is a fair price for it? A. You refer now, I take it, to Mr. Hunter and Mr. Bennington and Mr. Morrissey?

Q. Yes. You say it ought to be bought cheaper? A. Yes, sir.

Q. And you are the only real estate expert in the city that will say it can be bought at that price? A. How do you know that?

You have three experts here as against 6,700 real estate men in the city of Brooklyn.

Q. What I am getting at is how is the railroad company going to prove as to what the value is. You have refused to testify as to these values, and help get this land at the price you want. A. I don't understand your question.

Q. You have said that you didn't want to testify as to these values that you say it ought to be bought for. A. Mr. Woody, if I were in private practice I would be tickled to death to do it. The position that I occupy, and the amount of work that I have to do there, prohibits me from doing it. Also, in addition to that, this is the New York Municipal and I am in the employ of the city and not your employ.

Q. Now, what I am getting at is this. You put the railroad company where they have got to condemn this land. Now, how are they going to prove these low values? A. Why do you say low values? Let's see who your experts are.

Q. Well, Mr. Morrissey. A. Is Mr. Morrissey in your employ?

Q. He is an expert. A. Is he in your employ?

Q. You say Mr. Morrissey is not a good expert? A. I ask you this: Is Mr. Morrissey in your employ to obtain this land down here at Brighton on your railroad property from Ocean Parkway?

Q. He is our expert. A. Is he in your employ?

Q. No. A. What is he employed to do?

Q. To give us the value. A. Is he conducting the negotiations for the purchaser?

Q. He may in some cases but not in all. A. Who is paying him for conducting those negotiations?

Q. He is not paid. A. He is not paid?

Q. He has not been paid yet. A. Where does he expect to get his money from? Is he doing it for nothing? You are asking me, I think I have a right to ask you. As I understand it, Mr. Morrissey is not under any retainer to be paid by you for the acquisition of these properties. He did put a valuation on these properties here when you started off to buy them. Those valuations I considered were excessive. I think that has been proven by some of the purchases that you made. Now, any purchase that

he makes at Coney Island, he is drawing a commission from the seller of that property, and he is representing the seller of that property. I understand in addition to that, that he is going to represent the owners of this property in any pieces that you don't acquire in condemnation. Well, he said that in your office there, talking to Mr. Woody that he could not take the stand for you and he expected to take the stand for the property owners. He said that in your presence and Mr. Woody's presence and my presence.

Mr. Woody.—Do you mean to tell this Commission that Mr. Morrissey is a man that will try to represent both sides?

Mr. Cedarstrom.—He is not representing both sides.

Mr. Woody.—Do you mean to say that Mr. Morrissey said to me or you that he was representing both sides? A. No, he did not.

Mr. Moss.—You haven't got the point of his remark at all.

Mr. Woody.—Do you say that he said that he was representing the property owners?

Mr. Cedarstrom.—He said that in condemnation proceedings he would represent these property owners and he said that in your office. He is in their employ to the extent of offering this property to you at certain figures and if he sells it he is going to collect commission. I know of at least one case where another broker is conducting this and he is going to collect commission.

Mr. Woody.—Will you give us the name of that and the broker? What is the man's name?

Mr. Cedarstrom.—There was a real estate man in to see me about whether I would approve a certain figure or not. I said, "How are you interested?" He said, "I am buying some stuff there in connection with Mr. Morrissey." I said, "What are you going to do about the commission?" He said, "We are going to divide the commission." I will tell you he has been a city expert down there, and I will give you this property too. I've got an elegant memory for facts and figures but names, they stump me.

Mr. Woody.—But you can get it, and will get it.

Mr. Cedarstrom.—What I am getting at is this, that I hardly think it is a fair test for you to criticise me when you employ a man to give you certain valuations on the acquisition of properties and then that man goes in and goes to the owners of these properties here and then comes to you and recommends a purchase when he is getting a commission from the other side and interested in some sale that another broker is making. Now, I don't think that that is a fair criterion to go by as to the reasonableness of my conclusion.

Mr. Woody.—May I just ask you if Mr. Morrissey didn't say this, Mr. Cedarstrom: "I have appraised this property at this figure. I am on record and if I am called by the railroad company to testify I cannot testify to your values."

Mr. Cedarstrom.—No, I don't recall him saying anything of the kind.

Mr. Woody.—Mr. Morrissey's opinion as to the value of these properties is excessively high in every instance.

Mr. Yeomans.—Do you think you can appear for us?

Mr. Cedarstrom.—Now you want to employ me again, don't you? Here is another point here. I will go along that line. I have been in this game here for twenty-five years; it is the only thing I know — real estate appraising and expert work. I have been asked repeatedly this very same question that Mr. Yeomans gives me here and I don't think it is fair to give it to me as to whether I would recommend an expert or not. All experts in my mind are good; some are better than others and it depends upon the amount of time and study they give, and the experience they have in a particular thing as to how good they are in the end. Now, this is the point I am making: Mr. Bennington will say, "How do you know that you would accept his conclusions or that you would think his all right or as good as yours?" I know lots that are better than I am. Of course those men it would not be well for me to recommend. The point I want to make is this, laying all joking aside: If I were to recommend anybody to Mr. Bennington or to Mr. Yeomans, especially in the acquisition of any real estate or anything else, see the position I would be placed

in? It is a well known fact that when one expert recommends another for some work that he can't do, there is a division of fees between them. Now I have refused repeatedly to do that sort of thing. I play no favorites; the thing is open. So far as any conclusions that I have voiced in the Public Service Commission on any of these matters, they have been at perfect liberty at any time to bring as many experts as they want to and show that I am wrong.

Mr. Woody.—Will you approve any price where you think it is more than the market price of that real estate?

Mr. Cedarstrom.—Absolutely I will. Yes, certainly in an acquisition like yours, certainly I would.

Mr. Woody.—Haven't you taken the stand that in order to keep from being criticised you could not afford to approve anything except where you thought it was less or around the market price?

Mr. Cedarstrom.—That is not a fact and none of my purchases indicate that. I haven't been able to buy anything for what its real market value would be except in some instances where we have got some bargains, but that has been where the owners wanted the money in a hurry.

Mr. Woody.—You know as a rule it is hard for the railroad company to buy property in open market at its market value.

Mr. Cedarstrom.—I think our method is better and we get better results, to be perfectly frank with you. We have bought a number of pieces. Our method there is when it is necessary to acquire property, we send out a notice to each owner of the property. If a lawyer or real estate man has been in to see us and said he represented that man, we send a letter to the owners and to the real estate man and we also send a letter to the owner that so and so claims to represent you and if they want to avoid litigation and sell at a reasonable figure, we are ready to take the matter up with them. I understand your method is not to let them know unless you have to that you want to buy the property and I don't think it works out as well as ours, to be frank with you. I think I settle about 80% to 85% of our cases in our office there, at Eighty-first to Eighty-sixth Street. I think out of 28 parcels

there, I think we acquired over 20 by private purchase and I know the city's experts there and they were responsible figures, too.

Mr. Yeomans.— You used to testify in a good many cases before you went into the Public Service Commission.

Mr. Cedarstrom.— For about two years or two and a half years, I was testifying pretty nearly all the time.

Mr. Moss.— Whom as clients?

Mr. Cedarstrom.— For the city, nearly always. I have never testified against the city in any proceedings of any kind or nature. Supreme Court on questions and then for the city on condemnation, street option, change of grade, some other acquisitions, and then for the State Insurance Department wherever there was any exception taken to my valuations I was subject to cross-examination by the Insurance Company.

Mr. Yeomans.— Were you in court on condemnations a great deal of the time, I mean before Commissioners?

Mr. Cedarstrom.— For about two years; it was during Mr. Riegelman's early term there.

Mr. Woody.— You say that you think that we could buy cheaper if we let them know that the railroad company wanted to buy and what they used them for, than to not let them know?

Mr. Cedarstrom.— You may differ with that. I am a real estate man and you are a lawyer. It is just simply a case —

Senator Thompson.— They haven't a right of condemnation to anything except what the railroad uses of them.

Mr. Cedarstrom.— I speak now of these lines that are dovetailed in with the city-owned lines. There are cases where the Rapid Transit Development Company acquired the property, where we bought that sloping bank easement, that is a different proposition entirely. As I understand —

Senator Thompson.— What you are telling Mr. Woody I assume he already knows, that is if he limits himself to an easement or right of way, just exactly that property that you can prove is

necessary, you can just as well tell them as not, but you generally want to get the fee title and you want sometimes to get more property than you have a right to condemn.

Mr. Woody.— We are often in that position.

Mr. Moss.— I think we are a little off the track on this.

Mr. Woody.— You didn't tell me that on these various lines, on all of them, that there were railroads being operated before this contract was made.

Mr. Cedarstrom.— I think I said that.

Mr. Moss.— You have so much trouble with the B. R. T., I suppose you must have an awful lot of trouble with Mr. Quackenbush's office with the Interborough.

Mr. Cedarstrom.— As a matter of fact, it seems that almost every piece of property that we acquire down here, the B. R. T. owns or some subsidiary company. With the Interborough I have only had one case. They don't seem to have any property, so that if we can't buy it right and it costs us more in condemnation, we go somewhere else. For instance, a power station or anything of that kind.

Senator Thompson.— You think your troubles come from the subsidiary company business?

Mr. Cedarstrom.— Mr. Bennington and I never have any question except when it is an outside —

Mr. Bennington.— That is wrong; we always have trouble, Mr. Cedarstrom.

Mr. Cedarstrom.— Here is a piece at Coney Island. The purchase price was \$7,000.00, that was submitted by Mr. Bennington on a piece of property on February 26th. That was the piece that you bought from Mr. Ackerhold. We had no trouble in that. We went down and looked at it. Mr. Bennington said \$7,000.00 and I said that is all right.

Mr. Bennington.— We talked two hours on that.

Mr. Cedarstrom.— Maybe I like your company. Here is an-

other purchase that Mr. Bennington approved which I approved, and this was before he made the contract and I don't think we were outside the premises over five minutes. That was a thousand dollar purchase on this right of way. Here is another one here in March, 1915, right of way of 2226, that is the Robinson case.

Mr. Bennington.— We made a good bargain there.

Mr. Cedarstrom.— We knocked \$500.00 off in an hour. Now here is two cases, one along side the Robinson, where I disapproved. I will read it if you don't mind.

“ Mr. James B. Walker, Esq.,

“ Secretary.

“ Dear Sir: I transmit in quadruplet, without my approval proposals for the purchase of real estate along Coney Island by the New York Municipal, from Samuel Daniels, for the sum of \$5,000.00, property abutting on the old Sea-view right of way, plot 38 x 65, and from Morris H. Wils-tine, for the sum of \$4,000.00, property abutting on the old Sea-view right of way, located on the southerly side, plot 25 x 65.

“ I am of the opinion that the sum proposed to be paid for these properties are considerably more than the market value and equal to an amount that would be awarded to owners in condemnation proceedings, and should it become necessary to acquire any of the adjacent property in condemnation proceedings by reason of the payment of such prices it may result in larger awards to other owners.

“ It will be necessary for the New York Municipal Corporation to acquire adjacent property either by private purchase or in condemnation proceedings.”

I find no such objections as that to the other.

Mr. Woody.— What price did you put on that?

Mr. Cedarstrom.— I didn't put any on.

Mr. Woody.— What do you now?

Mr. Cedarstrom.— I am not prepared to say at this minute.



It is not a fair question right off the reel. The objections I made were that it was my opinion, we have agreed on certain figures on this thing in your office. You have those figures.

Mr. Woody.—What do you think it is worth now?

Mr. Cedarstrom.—It is not a question of what it is worth; it is a question now if these two properties were the only properties that you had to acquire down there, you had no others and they couldn't be used as a criterion or basis in a condemnation proceeding, I would approve them at these prices. The question I raise here is that it is necessary for you to acquire other properties, and you are creating a criterion and a basis for other properties there that might cause you to pay more for the other properties than you would have if these facts were not in existence.

Mr. Woody.—Are you employed by the Public Service Commission to give us that advice?

Mr. Cedarstrom.—I am employed by them to give them such advice and I do it.

Mr. Moss.—He wouldn't give you advice if you didn't ask for it.

Mr. Woody.—I don't think we asked for that.

Mr. Smith.—I think he is employed by the Public Service Commission to force that advice on you if you don't take it.

Mr. Moss.—We are not interested in the matters wherein you and Mr. Bennington have agreed. You don't need to illustrate that any further. If we don't get back on to the main track we won't ever finish our inquiry.

Mr. Cedarstrom.—This is a sample of my approval and how we get together.

Mr. Moss.—Don't bother with that. Let us get back on the main track. Can you start in where you left off and pursue the line of inquiry along this general route that you outlined sometime ago?

Mr. Cedarstrom.—I am ready to finish up this Gravesend Ave-

nue line. Mr. Bennington I think was going on the stand on that. I gave all that statement yesterday.

Mr. Moss.— Then you say the Gravesend matter you testified to yesterday. Proceed to the next which you have not testified to.

Mr. Cedarstrom.— There is before you my report and full information on this Second Avenue, Thirty-seventh, Thirty-eighth Street and Third Avenue and the right of way to Fifth Avenue. That is in your records here.

Senator Thompson.— I wish you would explain that proposition to me, but I understand that cost a million dollars.

Mr. Cedarstrom.— Where we were at was this list, the five years that I testified to yesterday.

Senator Thompson.— That is down at the Terminal. What do you use it for.

Mr. Bennington.— We use that for storage of cars, shop inspection—

Senator Thompson.— The shop there appears to be used for operating, to repair the cars in operation.

Mr. Bennington.— That is construction.

Senator Thompson.— How is that construction?

Mr. Bennington.— They are using the property just West of that for subway construction.

Senator Thompson.— When I was down there, there was a great big building there; that building seemed to be full of cars of the New York and Municipal Railroad. That was the used cars; it seemed to be a repair shop for those cars. Isn't that an operating use instead of a construction use?

Mr. Bennington.— The car boys come there with that truck.

Senator Thompson.— Those I saw there were old cars. They were cars in use.

Mr. Bennington.— You mean stored there overnight probably.

Senator Thompson.— They seemed to be equipping them, fixing them, repairing them.

Mr. Bennington.— Repairing and equipping them?

Senator Thompson.— That would be an operating expense and not a construction expense.

Mr. Bennington.— I don't know anything about that.

Senator Thompson.— The only thing I could see in the yard was there was some cars standing on side tracks, yellow cars, small; they looked like surface cars, and there were some people there working, painting some things. The whole yard gave the appearance of a yard used for operating purposes rather than a construction purpose.

Mr. Bennington.— The New York Municipal, under the terms of the lease, can use that yard for any purpose it wants to. I am not an officer of the New York Municipal and I can't tell you what they use it for.

Senator Thompson.— What I was getting at was to understand why it was necessary to pay \$5,000.00 a year for 5 years for construction down there. You can find that out?

Mr. Bennington.— I will find out and let you know Monday.

Senator Thompson.— Then you go across Fourth Avenue and you strike this terminal. Now, it seems that the city allowed one of your companies, I don't know which one, a million dollars for the right of way over there. That is correct?

Mr. Bennington.— South Brooklyn, yes. That is right in the contract.

Mr. Moss.— They got credit on it of a million dollars of the amount of money they were to furnish.

Senator Thompson.— Well now, there is some construction going on over there at that same place.

Mr. Yeomans.— The city has built a line right through there.

Senator Thompson.— The city's line is down underneath the

surface and the cost of that depression is being paid by the city. That is, it is being charged to construction, and it leaves the city easement down under the ground and leaves the surface of the ground for operations of the railroads. The effect of it is that the city's tracks are down below the surface, and the surface of the ground is left for your own uses.

Mr. Bennington.— That is an open cut.

Senator Thompson.— For four or five blocks it is completely covered.

Mr. Woody.— It has only been widened and enlarged.

Senator Thompson.— But the surface is all left so that you have the use of it for your retained railroad.

Mr. Woody.— We have the right to cross over that if we should want to build a structure, yes, sir.

Senator Thompson.— I say the whole surface is left, so that your present railroad has it and will continue to have.

Mr. Woody.— They only have an easement through the cut.

Mr. Moss.— They grant a perpetuity easement to the city, and it is not clear in the contract that they are reserving the easement also.

Senator Thompson.— The surface grade there is left and the railroad company have the use of the surface just the same as they did before, isn't that a fact?

Mr. Yeomans.— No, they moved their track off it.

Senator Thompson.— But you have all that surface if you want it.

Mr. Yeomans.— We can make a connection across it, one railroad to another.

Senator Thompson.— I say you can use it for any purpose you want.

Mr. Yeomans.— You can cross it.

Senator Thompson.—You can run right parallel to the city's road.

Mr. Yeomans.— I don't think we have a right to.

Senator Thompson.— The way it looks to me is that the city has the right of way, and that the city's right of way is depressed below the surface and that you have just as good a property, if not better, than you had before you granted this franchise for which you got a million dollars.

Mr. Moss.— “ Dated the 30th day of December, 1913, between the South Brooklyn Railroad Company and the City of New York,” it recites the contract No. 4 and goes on to say, “ party of the first part, in consideration of the sum of one million dollars, lawful money of the United States, paid to it by the New York Municipal Railway Corporation, at order before the unsealing and delivery of these presents, receipt whereof is hereby acknowledged, does hereby grant, sell, release, and convey to the party of the second part, its successors and assigns forever, a permanent and perpetual right, easement and right of way including the rights hereinafter mentioned, for the construction, equipment, maintenance, operation and perpetuity, free of interference and right of interference of a rapid transit railroad in and to the following lands and premises, to wit:” Then follows the description. Then in the habendum clause is this statement: “ In conveying the perpetual right of the easement and right of way including the rights aforesaid, the party of the first part does not divest itself of, but on the contrary reserves and retains the following lands in respect to the lands above described.” I pass over the first and read the second: “ The rights of the party of the first part, its successors and assigns, so long as the same does not interfere with the operation of the said Rapid Transit Railroad, to operate over the tracks of the said Rapid Transit Railroad within the lands and premises above described, and any failure on the part of the party of the first part to exercise such right of operation shall not deprive it of the right to exercise such right at any time in the future.”

I think that is the essential part, so that, Mr. Chairman, as long as the city is allowed to run its trains somewhere on that right

of way, the granting party reserves to itself any other use that may be made of the strip of land. It may run under or it may run over, so long as it does not interfere with the city's exercise of a right of way.

Senator Thompson.— How many tracks has the city got a right to put there?

Mr. Woody.— They are already constructed now.

Mr. Smith.— The city imposes no service incumbrance over that section.

Mr. Woody.— The city got down there in a cut that was already there, only widened it a little.

Mr. Moss.— In the contract No. 4 it would look as though the city were getting an exclusive right to that right-of-way; when you read the deed you see that the city has a right to run its tracks, but that the grantor reserves to itself any use of that strip which is not inconsistent with the city's getting a run over the right-of-way. It may tunnel or it may go overhead, so long as it does not interfere with the city. In other words, it gets the same use that the city has in that strip of land.

Mr. Woody.— Not in the part that the city uses.

Mr. Moss.— And it gets more than the assessed valuation of that strip of land by a great deal.

Senator Thompson.— This contract, page 21, article 11, states as follows: "As one of the considerations of this contract, the Lessee agrees to contribute to the cost of construction of the railroad. The amount of such contribution shall be thirteen million five hundred thousand dollars which includes the sum of one million dollars to be contributed by the Lessees through the conveyances to the city of all easements necessary for the portion of the Broadway and Fourth Avenue line between Fourth Avenue and Tenth Avenue in the Borough of Brooklyn." Now, how much did that whole property cost the railroad, do you remember?

Mr. Woody.— There was an estimate made before the contract was made.

Senator Thompson.—When the South Brooklyn originally acquired it?

Mr. Woody.—I don't know. The big element here was the cut that was excavated in it.

Senator Thompson.—I was talking about the land. How much did the South Brooklyn railroad pay for it?

Mr. Woody.—I don't know how much it was.

Mr. Bennington.—We have no record of that; that was way back in the early '80's.

Senator Thompson.—What did you do with the records? When did you buy the foreclosure?

Mr. Bennington.—I think it was in 1900.

Senator Thompson.—How much was the purchase on the foreclosure?

Mr. Bennington.—I haven't any record of what it was.

Senator Thompson.—There must be a record of it. Will you find it out for me?

Mr. Bennington.—Yes.

Senator Thompson.—Of course I realize—

Mr. Moss.—May I withdraw Mr. Cedarstrom for a moment and call Mr. Schermerhorn?

MR. AVERY SCHERMERHORN, 829 Flatbush Avenue, Brooklyn, having been duly sworn, testified as follows:

Q. (By Mr. Moss.) Are you employed by the Public Service Commission? A. Yes, sir.

Q. In what capacity? A. I am a real estate clerk of the Commission.

Q. Do you know Mr. Cedarstrom? A. Yes, sir.

Q. Do you have dealings with him? A. Daily.

Q. I have just asked you about a certain matter. I ask you again. Do you remember a conversation with Mr. Cedarstrom

about a year and a half ago that had reference to Mr. Hunter?  
A. I do, yes, sir.

Q. How did that conversation come up? A. I think Mr. Cedarstrom was cautioning me about some little error I had made. He was saying to me, "I think that you can't be too careful," and he gave an illustration. He said that "Before I was employed regularly by the Commission, on one occasion Mr. Hunter came over to my office, and said in substance, I can't remember the exact words, 'You are employed by the Public Service Commission to do a little work for them; why not be employed by us at the same time?' as near as I can recollect.

Q. I have asked you to produce some vouchers, and I will go over these vouchers after we adjourn today. We are not in a position to bring them up, except this one. I ask you to explain this document and voucher which you have in your hand. A. The voucher is not here, but it is simply a statement. I objected to an article known as voucher, July 7, 1915.

Q. How was it before you? Why did you object? A. Because I am supposed to check up all those vouchers.

Q. Had this relation to the charges in connection with the subway? A. Yes, sir. Sea Beach Line.

Q. You check up these claims and this is one that you objected to? A. Yes, sir.

Q. Have you ever passed it? A. No, sir.

Q. Who presented it? A. It was presented in due course of the routine of the office.

Q. You don't know who presented it actually? A. It came in through the mail, you know.

Q. In behalf of whom was it presented? A. Presented in behalf of the New York and Municipal Railway Corporation.

Q. Now describe it. A. It purports to be a payment of \$1,151.41 from the New York Municipal Railway Corporation to Brighton-by-the-Sea, Inc., covering an amount that that corporation claim to have spent to discontinue its contracts for construction work pending approval by the Commission of the exercise of the operation of purchase arranged between Mr. Timothy S. Williams, President of the New York Municipal Corporation and Mr. William Greaves.



Q. Is Mr. Greaves the gentleman that is connected with the Realty Associates? A. I think he is.

Q. And the Realty Associates control Brighton-by-the-Sea? A. Yes, sir, as near as I can make out.

Q. When was that presented? Have you described it fully? A. Why, the payment was to be made, or was made at the direction of Mr. Williams, specific direction. He sent a communication to the Comptroller dated July 14, 1915, in which he states—

Q. Comptroller of what? A. Of the New York Municipal Railway Corporation. In which he states in part, and I think from informal talk with members of the Commission that the Chief Engineer will include that payment in the cost of construction inasmuch as the expense is due not to any fault of ours but to the delay of the Public Service Commission. The arrangement between Mr. Williams and Mr. Greaves in effect and operation, I am not quoting now, was not authorized by the Commission and the delay in approving the exercise of the option was amply justified in the fact that the cost was very materially reduced before final approval by the Commission. This is not a fair charge as far as the New York Municipal Railway Corporation's contribution under contract No. 4, and is therefore objected to.

Q. When did this matter come up? A. Oh, I got this voucher maybe two months later.

Q. When was that? Give us the date. A. I can't give you the exact date on the data I have here and I don't recollect.

Q. What is the date of your memo that you have just been reading? A. That is January 28, 1916. I usually get them several months later.

Q. But it remains without the approval of the Commission up to date? A. It does.

Q. That is as far as I go with you now. I will go over your vouchers later.

Mr. Yeomans.—In connection with that charge, I remember about it. We had an option for a certain time which was submitted to the Public Service Commission, to make this deal down there at Brighton-on-the-Sea and the option ran out. The option having run out the Realty Associates made a contract to repair and build up their grand stands for a racing meet, and finally,

after the Public Service Commission came to an agreement on that, Mr. Greaves representing the Realty Association said he had gone to this amount of expense and he would open the option if this was paid and we took it up with the Public Service Commission informally and told them that we could get this opened by paying whatever that was. He thought it was about \$2,000.00 and it turned out to be \$11,000.00, just exactly what he had to pay to get out of his contract. The Commission approved of it either informally or formally at the time. They did informally before we agreed to it — before we could get it opened.

Senator Thompson.— What Commissioner did you have the talk with?

Mr. Yeomans.— There were several there, I am sure Mr. McCall was there, and I think some others. We had been negotiating on how the differentiation should be made and meantime this option ran out. In the meantime the Realty Associates entered into a contract with a carpenter or some men to repair the grand stands preparatory to their having a race meet, and in order to carry the deal out, the Real Estate Associates said, "We won't do this."

Senator Thompson.— What is the Realty Associates?

Mr. Yeomans.— An association over in Brooklyn connected with the Title Guaranty Company, and subsidiary or under their control largely.

Senator Thompson.— Have they any connection with the B. R. T.?

Mr. Yeomans.— None at all.

Senator Thompson.— When was Brighton-by-the-Sea incorporated?

Mr. Yeomans.— That is one of the Realty Associates subsidiaries.

Senator Thompson.— Have you got a realty company?

Mr. Yeomans.— No.

Mr. Cedarstrom.— Doesn't the Transit Development Company act as a kind of a holding company for you?

Mr. Yeomans.— It simply maintains the tracks and does repair work. We have no realty company. What you have in mind is just exactly as in this \$150,000.00 deal, the Transit Development Company purchased that property and took the title to it.

Mr. Cedarstrom.— Isn't it a fact that they frequently buy property from you and then later on turn it over to the New York Municipal?

Mr. Yeomans.— Because by buying it that way and taking the title in the Transit Development and mortgaging attaches —

Mr. Cedarstrom.— You use it as a holding company.

Mr. Bennington.— Used as a purchasing agent.

Mr. Cedarstrom.— The time that intervened between their purchase and the time that they received the money, as I understand it —

Senator Thompson.— That is the Transit Development Company gets 6% on the money.

Mr. Moss.— Does it ever come about, Mr. Cedarstrom, that there are proceedings for the taking of property and for the assessing of the value of the property between these companies in which the city is not directly represented?

Mr. Cedarstrom.— Why, the question arose on this Brighton-by-the-Sea. At a meeting of the Commission I raised the question. "Of course," I said, "If we don't approve this agreement, the New York Municipal may go in and condemn this right of way. They are all ready to enter into this contract and they will put their own experts on the stand and they are of the opinion now that this is reasonable. I assume that they have taken the opinion of their experts, and they will go on the stand and testify to those figures." I said I would like to know if there is any way that the Public Service Commission or the city may be represented there. Col. Hayward was of the opinion that on application to a Supreme Court judge, they might grant that, but it seemed to be the opinion that under the contract, we have no standing at all. Now, that necessity for condemnation proceedings of course was obviated by the approval of the agreement there at

\$85,000. Now in this \$150,000.00 purchase there for the land for the sloping bank that was in the Transit Development Company of course the city would require that and the Corporation Counsel's office would conduct the proceedings. Of course in this Nassau right of way, the question arose there also, as to the New York Municipal acquiring it from a subsidiary company, and I know that that was one of the elements that induced the Commission to make a concession on the Brighton-by-the-Sea, and I think that was an element when an allowance was made on the Nassau right of way by the Commission. Of course if the Commission had not approved and they had gone into condemnation on that, why they would have conducted the proceedings.

Mr. Yeomans.— Yes, but let me explain one thing. You say we would have done. The only proceeding that is pending, a lawyer has been agreed upon between the defendant and us.

Senator Thompson.— You say everything you want to now.

Mr. Yeomans.— I am simply trying to state that the only proceeding that is pending, we submitted the name of some lawyer to the Public Service Commission and my office, which is the only law office of the company, has nothing to do with the New York Municipal proceeding, and they can use their own judgment and do anything they want and that would be true in any case where the New York Municipal would make the condemnation, and that practically is a condemnation for the proceeding. I want to get it on record here that we do not have anything to do with representing both sides in these proceedings.

Mr. Moss.— What is the name that was submitted?

Mr. Yeomans.— Olin & Kuhn.

Mr. Cedarstrom.— The point that Mr. Yeomans raises I testified to that very point yesterday, and said that was the only case pending but nevertheless, I was quoting what the Public Service Commission had determined as to their right. Their right would be to go in and conduct the proceedings where they were acquiring a right or property from the subsidiary company. Now as to whether they would do that or not does not enter into it, but I do know in all of these negotiations that have been dealing with the

subsidiary company that question has been raised and I am sure that it has influenced the Commission in its determination.

Senator Thompson.— What is the question ?

Mr. Cedarstrom.— Simply that where the New York Municipal are trying to acquire a piece of property from a subsidiary company, and they can't agree to a purchase, that they have the right to go in by eminent domain and condemn that against that subsidiary company and they conduct the condemnation proceedings, put their own experts on the stand. Now, the only case that they have had so far that there has been any occasion to go into condemnation has been that 37th Street and 38th Street and Seventh Avenue and there I testified yesterday that you had suggested the employment — I believe this question has been raised in your presence in the Public Service Commission — employment of an attorney.

Senator Thompson.— For instance, Mr. Yeomans would appear for one company and another attorney for another company.

Mr. Yeomans.— I don't think we will appear in these proceedings.

Senator Thompson.— But you will have to pay whoever did appear. You won't find any lawyer here who is going to wait forty-nine years to get his pay amortized, so you will have to pay him now, either the New York Municipal or your subsidiary company. It is possible then, under the law, for the New York Municipal Railway to enter.

Mr. Bennington.— The piece you have in mind is at the intersection of Seventh Avenue and 37th Street.

Mr. Cedarstrom.— Yes.

Mr. Bennington.— That is Nassau Electric.

Senator Thompson.— And all the stock of the New York Municipal is owned by the B. R. T., who does —

Mr. Bennington.— New York Consolidated.

Senator Thompson.— The B. R. T. owns all the New York Consolidated.

Mr. Bennington.—The majority of it, 94 per cent.

Senator Thompson.—And this Nassau Electric, is that owned by the B. R. T.?

Mr. Bennington.—Most of it.

Senator Thompson.—So the B. R. T. owns both companies. One of these companies is owned by the B. R. T., starts a condemnation proceeding against the other company owned by the B. R. T. and they have the lawyers on both sides paid from the same source and they call the expert witnesses, one on one side and one on the other side and as I understand there is no chance in such a case, although this is charged to construction, there is no chance for the city or the Public Service Commission to be a party to that.

Mr. Yeomans.—I am perfectly satisfied they should appoint any lawyer they want.

Seantor Thompson.—But they could not get in there except by consent.

Mr. Yeomans.—I consent now.

Mr. Woody.—If we would connive and put up a job there and get an award that was not fair, when it came to approving it under the contract, they would turn it down.

Mr. Cedarstrom.—How can we turn down an award made by a condemnation Commissioner?

Mr. Woody.—They can turn down anything that is inclusive. If both sides were represented by the same lawyer it would be presumptive conclusion; it would need no proof. That is what he says the danger is.

Senator Thompson.—The law permits such a situation, and if you did not come to the rescue of the law by your consent, the law would really permit that.

Mr. Moss.—Of course there has never been any inclusive suits in connection with the dual subway.

Mr. Yeomans.—This contract provides that where we can't

condemn the city may go in and condemn because it has greater power than we have.

Senator Thompson.—The city could not condemn this 38th Street business.

Mr. Yeomans.—Yes, for the reason that we haven't got the power to condemn property already subject to a public use and it would only be because we would not raise that defense that you could condemn, whereas the city can, under the Rapid Transit Act, condemn property already subject to public use. I will go as far as to say that if there is going to be any question about this that I am willing to —

Senator Thompson.—The code ought to be changed there.

Mr. Cedarstrom.—Where the New York Municipal Railway Corporation is going to buy a piece of property from a subsidiary company, the same as this 37th Street property, the only people that I met in the B. R. T. office that think it is a fair figure are men that are in the employ of the subsidiary company. I never met one who was in the employ of the Municipal.

Mr. Yeomans.—We submitted it to an arbitrator, and we all agreed on the day.

Mr. Cedarstrom.—With those figures accepted?

Mr. Yeomans.—Just the same as yours were.

Mr. Cedarstrom.—How far away was it? It was very close to Mr. Bennington's figure, was it?

Mr. Cedarstrom.—You are willing to give the city or somebody else in condemnation proceedings, but I claim it is hardly fair that Mr. Bennington's conclusion for the New York Municipal Railway Corporation, when he is employed by the subsidiary companies that are selling, he can't help being biased in favor of the subsidiary company, should prevail as being the conclusion of the New York Municipal.

Mr. Yeomans.—We can't make an agreement for a purchase unless you people agree to it.

Mr. Cedarstrom.—You see how unfair it is that the New York

Municipal should employ a man that looks at it from his standpoint. You simply think — I am reasoning this because Col. Williams says that I won't approve anything that is a reasonable figure — the figures that are submitted from the New York Municipal and all the negotiations are from men in the employ of the subsidiary company who are undoubtedly biased.

Mr. Yeomans.— I think when we get through we will come out about right, that our only objection is that it takes so long that costs run up by reason of it, that in most of these proceedings we come out about right.

Mr. Moss.— What you mean that the costs of coming down and bringing up, eat up what he saves and it is your delay that eats up what he saves.

Mr. Cedarstrom.— The point that I make is that Col. Williams' criticism of my not being willing to approve a reasonable figure is based on an erroneous basis. He is taking the figures of men who are representing the owners of the property as the proper figure for me to approve for the New York Municipal in its acquisition. I am only representing the city, not the New York Municipal. I represent the city. There should be a reasonable charge. Col. Williams assumed that any figures that are arrived at as a reasonable figure for the New York Municipal to pay, when there is nobody that represents the New York Municipal that bases the valuation —

Mr. Bennington.— In this Seventh Avenue and 38th Street property which is under condemnation —

Mr. Cedarstrom.— Not yet.

Mr. Bennington.— Who put the valuation on that?

Mr. Cedarstrom.— You did.

Mr. Bennington.— No, I did not; Mr. Morrissey did.

Mr. Cedarstrom.— You told me that you did.

Mr. Bennington.— We submitted the appraisal of Mr. Morrissey in that case.

Mr. Cedarstrom.— Then you misinformed me. There has not



been a single turn that you told me that Mr. Morrissey furnished you figures on this valuation. If you had, I would have been very glad to meet Mr. Morrissey instead of you.

Mr. Bennington.— I discussed Mr. Morrissey's appraisal with you.

Mr. Cedarstrom.— On what?

Mr. Bennington.— On the Seventh Avenue and 38th Street cut.

Mr. Cedarstrom.— I thought you were talking about this Seventh Avenue and 37th Street route.

Mr. Bennington.— On this plan here, yes, but what was the result? That is the property we have under discussion now. We will take this particular piece of property—

Mr. Cedarstrom.— All right, take that particular piece of property.

Mr. Bennington.— Did I represent the Nassau Electric Railroad in that transaction?

Mr. Cedarstrom.— You did not.

Mr. Bennington.— Then I don't always represent the subsidiary company.

Mr. Cedarstrom.— You do to this extent: that you employ the expert for the subsidiary company, you don't employ them for the New York Municipal. If Mr. Morrissey was employed by the New York Municipal, I could talk different to him.

Mr. Bennington.— It may be that the New York Municipal Railway Corporation did not need the services of Mr. Morrissey.

Mr. Cedarstrom.— In your opinion, but he was in the employ of the subsidiary company and must take the view of that subsidiary company and give him the benefit of every doubt. You must always give your employer the benefit of the doubt in any appraisal. The honest difference of opinion upon two experts giving their side, the benefit of the doubt.

Mr. Moss.— Do you mean to say that Mr. Hayes has never represented the B. R. T.?

Mr. Bennington.— I don't think he has represented them during my incumbency and that is fifteen years.

Mr. Moss.— Has Frank Gallagher?

Mr. Bennington.— You are thinking about the Coney Island and Brooklyn. Regularly, until we bought the stock.

Mr. Moss.— Has Mr. Gallagher represented the railroad in any manner? A. (By Mr. Bennington.) I don't think so excepting I think there was an old assessment made that had not been closed out and Mr. Frank Gallagher was handling it when we took it over — the New York Coney Island stock.

Mr. Yeomans.— Mr. Dyckman has not to my knowledge. He was the attorney and they were the attorneys of the Coney Island at the time we purchased the stock about a year ago.

Mr. Cedarstrom.— Mr. Morrissey's valuation on that 37th Street was something like \$12,000.00 and I approved \$9,500.00. At least three of the Commissioners visited that property and viewed it before they adopted my conclusion of \$9,500.00. I requested them to go down there and view the property. The Commission unanimously approved the \$9,500.00 and disapproved any higher figure than that. Mr. Morrissey never appeared before the Public Service Commission and tried to sustain his figures. I visited Mr. Morrissey at his office. I requested him to go down there with me. I asked him how he arrived at his valuation. He adopted an erroneous method that could not be sustained in condemnation proceedings. I called his attention to that. Mr. Morrissey is a good expert. He said "I am taking this from a railroad slant." I said, "Take this from any figures that you wish." He had no reasonable answer to sustain his conclusion. I am perfectly willing that you should go to any expert and contest the valuation that I placed on the property.

Mr. Woody.— You have admitted that it is hard for a railroad company to purchase property at its market value.

Mr. Cedarstrom.— You did not put the question in that way.

Mr. Woody.— Well, it is every time.

Mr. Cedarstrom.— The question that you asked me was if I considered the basis of settlement should be the market value of the property. I answered you, “No.”

Mr. Woody.— You know that it is hard for a railroad company at all times to purchase —

Mr. Cedarstrom.— Now, I know that as a matter of fact.

Mr. Woody.— Now, I ask you to produce a letter or a written statement where you ever agreed to a purchase to go through at anything above what you consider the market value of the property.

Mr. Cedarstrom.— There are other elements to be taken into consideration besides the market value. You have claimed that on every transaction you have had before the Public Service Commission with all your subsidiary companies. The other element to take into consideration is in the acquisition by condemnation proceedings although we had bought it and acquired it at its real market value, we still would have the expense of the condemnation proceeding which may well be added on to the cost, and then you are cleaned up entirely. Another thing, too, there is absolutely no question about the reversionary interest if you acquire by private purchase, which I think you pay some little consideration for.

Mr. Woody.— You know you can condemn the fee, don't you?

Mr. Cedarstrom.— You can condemn the fee, but I know also that when you do there may be a reversionary interest.

Mr. Woody.— Not under the present law.

Mr. Cedarstrom.— I had other items besides that in that letter. I turned it down; it was considerably more than the market value, and in addition to that, you may establish a criterion for value. You have had that letter before you before. I have told you that Mr. Bennington has been aware of the fact. You have had access to the Commission before they adopted that. There is nothing goes through the Public Service Commission on this without you have every opportunity in the world to contest any conclusion that I have. During my whole period there you brought

one expert in and that was Joseph P. Day and he divided the figures between Mr. Bennington and myself, and he spent two days on the property. I think he spent twenty-four hours on that. I personally put in one week down on that right of way myself. I almost slept on it. I know that Mr. Bennington has been familiar with it for years; he may have traveled over it sometime. I don't think it is hardly fair. That is the only time that I recall during my period in the Public Service Commission when you have brought any expert in to contest my conclusions. What I am getting at is I want Col. Williams' testimony.

Mr. Bennington.—The only way you can contest those figures is to go into condemnation.

Mr. Cedarstrom.—I am not the sole judge.

Mr. Bennington.—Assuming that the Public Service Commission approves your figures, what is there for us to do?

Mr. Cedarstrom.—You have always got that court of last resorts, your experts and yourself.

Mr. Bennington.—Where you and the Public Service Commission have turned it down?

Mr. Cedarstrom.—That is a discretionary power of the Public Service Commission. That power does not lie with me. My power ceases in a recommendation, because if I had the sole power you would have never gotten a figure on any of these contracts at one dollar more than I thought you ought to get.

Mr. Woody.—Are you criticizing the Public Service Commission?

Mr. Cedarstrom.—I said if it was left to me and that discretionary power enables them to take into consideration other factors that I can't, enables you to befog the issues over there at times and introduce foreign facts that answer your purpose —

Mr. Woody.—Do you get befogged? Just what do you mean by "facts foreign?"

Mr. Cedarstrom.—Foreign to the transaction and point at that time.

Mr. Smith.—As a matter of fact, Mr. Cedartsorom, Col. Williams has commented here within the last two days that they went to the Public Service Commission and over rode your figures. That is their remedy, apparently.

Mr. Cedarstrom.—That is one of the points it brings in. I wasn't overruled in any one of them. They adopted it and afterwards changed and primarily I believe, on account of the power of condemnation that they have under the Rapid Transit contract. That was my opinion. I don't know.

Mr. Woody.—Do you claim the Public Service Commission did anything wrong?

Mr. Cedarstrom.—Absolutely not.

Mr. Woody.—What are you fussed about?

Mr. Cedarstrom.—I claim that as far as I was concerned they took other elements into consideration.

Mr. Woody.—Then they didn't overrule you?

Mr. Cedarstrom.—No, they did not.

Mr. Woody.—Then you have no kick.

Mr. Cedarstrom.—Absolutely not.

Mr. Smith.—Mr. Yeomans claimed that they did go constantly to the Public Service Commission and overruled his figures, which gave an apparent remedy to the B. R. T. on the figures submitted by Mr. Cedarstrom.

Senator Thompson.—He made the statement yesterday that if there was any case where he was wrong on valuation he would resign.

Mr. Cedarstrom.—If Mr. Williams could prove that I cost the city hundreds of thousands of dollars, I will resign at once.

Mr. Woody.—Here are a lot of transactions that go through, difference of opinion.

Senator Thompson.—I said yesterday and I have not seen any chance to change my mind, I can't see where there should be —

why the Public Service Commission should allow anything in dollars and cents to compensation of fear, in other words, to get at what the value of the real estate is and then they put on an additional because they are afraid of something. I can't justify that, and I don't see why they should. Another thing, it seems that you buy a piece of real estate, and the acquisition of that real estate works a saving in construction. Now, I can't understand why the railroad company should have that saving or any part of it allowed to them in the price of the real estate.

Mr. Woody.— But if they had to spend the money to get it —

Senator Thompson.— You pay all it is worth and you say that is \$50,000.00, but you have saved the sum of a hundred thousand dollars because you don't have to build a wall that you would have had to build if you had not got the real estate. I can't for my life understand why you should be given any part of the saving of the expense of building that wall.

Mr. Woody.— We were not —

Mr. Cedarstrom.— I plead with the Public Service Commission on that \$150,000.00 deal —

Mr. Woody.— This is the situation. The contract was let, the work was going on and the plans were changed. A certain railroad company had to pay more than the land was worth to get it, and all that was done to reimburse them.

Mr. Cedarstrom.— I plead with the Public Service Commission just as hard as I am trying to avoid condemnation in the 37th Street overhead easement, but I plead with them on this proposition here of that \$150,000.00 for the retaining wall to go into condemnation, exercise the right that they had and take this property from the Transit Development Company, they could have vested title there and acquired that property and I am sure that they would have acquired it in condemnation proceedings, and had a saving of over 50%. Now I will prove from the minutes here, as I quoted yesterday, of April 30, 1914.

“ Met in Chairman McCall's office, Present, Chairman McCall; Commissioners Eustis, Cram, Williams, Whitney;

Alfred Craven, Chief Engineer; LeRoy T. Harkness, Assistant Counsel; Turner, Deputy Engineer of Subway Construction; the principal Assistant Engineer; Siegfried Cedarstrom, Real Estate Expert for the New York Municipal Railway Corporation; George E. Yeomans, Counsel; Davies, Chief Engineer.

"Mr. Davies: The question was asked Mr. Cedarstrom, 'From a real estate standpoint I am unable to sustain \$150,000.00 for this property including the 20,000 feet.' I suppose I might be able to sustain it, taking it from an engineering standpoint and construction. However, purely from a real estate standpoint, I cannot sustain it. There is a saving in the cost of construction of \$200,000.00, and from that standpoint, it might be sustained, but from a real estate standpoint I do not think I could sustain over \$50,000.00.

"Mr. Minturn.—Mr. Cedarstrom is right about that. You have to buy all that or you can't carry out the scheme."

Then here is another one:

"Cedarstrom.—Yes, in addition to this property there was another fact to be taken into consideration and that is they give us an easement for temporary operation, so that it is not only this proposition, but there is the easement from a purely real estate standpoint the highest figure would be about \$50,000.00.

"Mr. Yeomans.—We all agree to that. Now that property they all agreed from a real estate standpoint that that property, the value of it was \$50,000.00. If we went into condemnation proceedings, we would acquire it from a real estate standpoint. It was admitted all the way through that the price that you paid for this property was about three times the value. There hardly can be any dispute about that."

The minutes of this meeting show it. There is another point here where Mr. Minturn agreed that \$50,000.00 was all right.

Mr. Woody.—What do you say a lot was worth there?

Mr. Cedarstrom.—At this point here? I will tell you. I have got that all in detail.

Mr. Woody.— I don't want to confuse you. Don't you know there was something to condemn there?

Mr. Cedarstrom.— Yes, I do.

Mr. Woody.— Don't you know that your appraisal right close to it was less than the Commission awarded?

Mr. Cedarstrom.— I do not —

Mr. Woody.— Are you sure of that?

Mr. Cedarstrom.— I do know this, that your company pays for the New York Municipal, based practically all its figures on the purchases that you made there. You acquired a lot of properties here. You paid an exorbitant figure.

Mr. Woody.— Are you testifying to something you know or something you heard? Are you just as sure about that as anything else you testified to?

Mr. Cedarstrom.— I am sure he took that into consideration.

Mr. Woody.— Do you say he followed those figures?

Mr. Cedarstrom.— Don't put words in my mouth. I said he took that into consideration.

Mr. Woody.— How?

Mr. Cedarstrom.— The exact value I don't know, but I know he testified to higher figures than he would have testified if those sales had not been present.

Mr. Woody.— How do you know?

Mr. Cedarstrom.— Because he told one of those deputy tax commissioners that very fact — Mr. Morrissey.

Mr. Woody.— You say that Mr. Morrissey told the Tax Commissioner that he did that? Who was that?

Mr. Cedarstrom.— The deputy of that division there, because he say Mr. Morrissey about some other properties there and Mr. Morrissey told him he could not take the figures there into consideration on account of these sales there, that he had to give some consideration to them. He could not get away from it. We all



know that. I could not get away from it if I testified on that. Here are a number of purchases here but if we had gone in there and acquired that whole thing, we could have put that in at what it was actually worth.

Mr. Woody.—What was your unit value of a lot down there? What is it now?

Mr. Cedarstrom.—I would have to get my data and I haven't got that data here. My figure as a whole was \$50,000.00 on that.

Mr. Woody.—You will get that for me?

Mr. Cedarstrom.—Certainly. I have the basis that I arrived at, in fact I have figures here that show that Mr. Morrissey and I agreed at Mr. Bennington's request on certain figures here for strips and the New York Municipal was paid in proportion, more for it than what we agreed upon.

Mr. Moss.—How near are you to the completion of this line—how much further have you gone to complete this route that we were traveling? You are pretty nearly through aren't you?

Mr. Cedarstrom.—I have got this \$150,000.00 purchase and then I was going down to Brighton-by-the-Sea.

Mr. Moss.—It seems to me that we can make better progress if you give the counsel and the witness time to gather some data and then go over it Monday. I would like to ask Mr. Bennington for an explanation of that voucher. Mr. Schermerhorn brought, at my request, a bunch of vouchers that are pending, being examined, presented by the Municipal Railroad, and I am just showing one to Mr. Bennington which I believe is a sample, asking what it is.

Mr. Bennington.—It is my salary from the New York Municipal Railway Corporation for the month of July, 1913.

Mr. Moss.—Is this the only salary you get?

Mr. Bennington.—Yes, sir.

Mr. Moss.—How many salaries do you get?

Mr. Bennington.—Ten.

Mr. Moss.— This is \$83.33 charged to the New York Municipal Railway Corporation for the services rendered, supervising real estate purchases during the month of July, 1910. Are these 10 salaries paid by the Municipal Railroad and subsidiary corporations?

Mr. Bennington.— The New York Municipal. They are paid by the subsidiary companies.

Mr. Moss.— Are any more of them charged to the city of New York?

Mr. Bennington.— Not that I know of. You had better ask our Comptroller that question.

Mr. Moss.— I am asking Mr. Bennington if he knows; if he doesn't know let him say so.

Mr. Bennington.— I don't know that that is charged to the city of New York.

Mr. Moss.— Do you know whether the salaries of any railroad—your salaries with any other railroad, go before the Public Service Commission or the Comptroller?

Mr. Bennington.— No.

Mr. Moss.— You don't know anything about Mr. Hunter's voucher?

Mr. Bennington.— I do not.

Mr. Moss.— Well, I will ask the Comptroller about that.

MR. HOWARD A. BELL is called as a witness, and having been duly sworn, testified as follows:

Q. (By Mr. Moss.) What is your connection with the Brooklyn Rapid Transit? A. Comptroller.

Q. Out of the large bunch of vouchers brought in by Mr. Schermerhorn, the real estate clerk of the Public Service Commission, I have picked out a few of the vouchers of Mr. Hunter, picked them out as probably representative of all of them, and ask you to explain those vouchers. You can explain them in gen-

eral if you like, that is, if you can give an explanation that applies to them all, you may do it in that way. A. Voucher No. 61, of July, \$2,795.90 covers the purchase —

Q. Is that a voucher of Mr. Hunter? A. No, that is among those that you handed me.

Q. That is there by mistake. A. Voucher No. 60 in favor of H. F. Hunter, real estate agent, or W. J. O'Neil, cashier, \$50.87 represents an adjustment on account of purchase of property from Henry Lewis Morris, July 22, 1913, said property fronting 50 feet on Broadway and 46 feet on Fulton Street.

Mr. Moss.— I don't mean that you shall read the whole voucher. A. I prefer to read the voucher.

Q. I don't want you to read the voucher because I can do that myself. A. (Witness continues to read.)

Q. May I have it please? Now, will you state in your own language what that refers to? A. This is my own language; it is written on the face of the voucher.

Q. I don't want you to read a voucher; tell us what it is about. A. In connection with the purchase of a piece of property, frequently there are tax adjustments, that is, the adjustment that takes place as between buyer and seller.

Q. Now here is one that we won't have to read every item of. This one of July 21, 1913, appears to be for repairs and sundry maintenance expenses, account of certain houses on Ditmer Street, Myrtle Avenue, amounting to \$14.45. A. In connection with the construction of the connection at Myrtle and Broadway, certain property had to be acquired and this relates to a part of the property taken in that connection. Under the terms of the subway contract, the title is taken by the New York Municipal Railway Corporation and until the property is declared in operation by the Chief Engineer of the Public Service Commission, it is a construction transaction and all revenues in the way of rentals are credited to construction, all charges in connection with acquisition or upkeep of the property are likewise construction charges. They cease to be such so soon as declared operative and the operation is assumed by the New York Consolidated Railroad Company, Lessee.

Q. Who determines the amount of rentals; the rents to be

charged for these houses? A. In many cases there are tenants at the time the property is taken, and then it would be a question of lease termination or in the case of a new tenant, probably Mr. Hunter, in connection with Mr. Bennington, make their recommendation as to what rentals should be charged, or they might fix the rental to be paid.

Q. Is there any discussion with the Public Service Commission or its representatives as to the amount of rental to be charged? A. No, I don't think so. The Public Service Commission has full knowledge of all purchases; a copy of every voucher is sent at the time of the purchase; a copy of every credit; every entry of every kind and character that goes on the books is forwarded forthwith to the Public Service Commission so they are fully cognizant of all of those transactions, and as to the propriety of charging repairs to which you referred a minute ago, to construction, here is an authorization of the Public Service Commission signed by Alfred Craven, Chief Engineer, authorizing the charging of such items.

Q. I will read this.

"May 13, 1913. Maintenance of buildings, real estate, Sea Beach Line. This authorization to cover cost of maintenance and repair of buildings purchased in connection with acquisition of real estate, labor and material required hereunder, will be secured in open market or in individual cases and circumstances, increased. Labor and material will be supplied by the company at actual expenditures therefor plus 10% for supervision and use of tools. Note it is the intention that charges arising hereunder shall ultimately be distributed when adjustments shall have been made and the cost of real estate pertaining to this line shall have been properly proportioned to the several pertinent capital accounts."

Well now, Mr. Hunter's charge for services each month at \$83.33, that is presented as a claim, according to these vouchers.

A. Yes, sir.

Q. Mr. Hunter, do you have any more than this one salary?

A. Yes, sir.

Q. Do you have 10 salaries? A. No, sir. I have one besides that.

Q. Well, you are modest. Then I see that Mr. Hunter's traveling expenses when he went out to Pottsville, Pa., to interview owners of property along the Sea Beach right of way, that is charged in, repairs, maintenance, etc. They are all charged in. Here is one that says "Sundry disbursements" without specifying what they are. Indeed, they are not specified in any one of these vouchers.

Senator Thompson.— Here is one that is specified as a "bonus." I don't think you have got any right to use that word down as low as \$10.00.

Mr. Moss.— Here is a bonus of \$10.00 and to Charles E. Harris, of the secretary's office.

Q. Now, this is a sample of many others of the same kind, a few of which I have seen. Mr. Harris, of the secretary's office — is he employed in the secretary's office in the Municipal Railway Company? A. I think he is one of Mr. Bullock's right of way men and each of those men get a salary and a commission for the easement that they acquire during the month.

Q. This bonus means commission in this case? A. The same as any drummer gets a commission and a salary for selling goods.

Q. On a certain percentage? A. So much a front foot. One man may make \$10.00 and one \$50.00.

Q. How many front feet did Mr. Shonts acquire? That is not up to you.

Senator Thompson.— I don't think that \$10.00 is any bonus.

Mr. Woody.— We have to have some unit of paying salaries.

Senator Thompson.— You had better get up some other word. You are infringing on copyright when you use that word.

Mr. Moss.— You are going into very sacred precincts when you use that term.

Senator Thompson.— Still, it may be that it will be easier to get it through the Public Service Commission that way.

Mr. Moss.— Here is another sort of a voucher, this one is John Heinemann, 1867 71st Street, Brooklyn, bill rendered covering alterations to house No. 2121 65th Street, Brooklyn, as per Real

Estate Department order No. 360, \$950.00. Now how were real estate condemnations determined? A. (By Witness.) In connection with the fourth tracking of the Sea Beach right of way, in a number of instances, encroachments were paid on properties. I remember in one case where they cut a slice off a man's building and the second story juts over into the subway, even to-day. Now, in connection with those encroachments, certain repairs and renovations had to be made and I think Heinemann is one of the men who did the work, and that is his compensation.

Q. Now, in reference to this bill of Mr. Bennington, are any of his other salaries passed to the Public Service Commission? A. No, sir.

Q. Is that the only one? A. Yes, sir. Any item that is charged to the subway account or construction or equipment by contract No. 4 is evidenced by a copy of a voucher on file with the Public Service Commission and the New York Municipal pays a certain proportion of each of the individual salaries, who are doing the work for the Municipal.

Senator Thompson.—We will suspend then, until Monday morning at 11 o'clock.

Adjournment.

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## JUNE 12, 1916.

Meeting called to order at 12:30, Senator Thompson presiding.  
Mr. J. Frank Smith, cross-examiner:

HENRY W. MAYO, is called as a witness and having been duly sworn, testified as follows:

Q. Your full name is Henry W. Mayo? A. Yes.

Q. You have been subpoenaed here as a witness? A. Yes, sir.

Q. What is your business? A. I am Assistant Corporation Counsel.

Q. How long have you occupied that position? A. Ten years.

Q. Where do you live? A. I live at 798 Elmo Place, Flabush, City of New York.

Q. So you have no personal interest in the Boston and Westchester Bronx proposition except — have no *personal* interest in it? A. Not the slightest.

Q. As Assistant Corporation Counsel were you assigned to protect the interest of the city in relation to some condemnation matters in the Bronx in relation to the Westchester and Boston?

A. I was assigned to take charge of a condemnation proceeding that the Corporation Counsel's office was asked to institute and take certain property in the Bronx which the New York-Westchester Railroad Company proved title to, for rapid transit purposes.

Q. What was the object of that condemnation — for what purpose? A. It was to take title and fee simple on behalf of New York where 39th crosses the Bronx to build the White Plains road connection, what is known as the White Plains connection of the new rapid transit system.

Q. That is part of the so-called dual system? A. Yes, sir.

Q. And when was that proceeding instituted? A. That proceeding was instituted in December, 1912.

Q. Prior to the institution of that proceeding had you any knowledge of any negotiations between the Public Service Commission and the company for the acquisition of that particular property? A. No, sir. My first knowledge came when the papers were sent over by the Public Service Commission in November, 1912, asking us to institute the condemnation proceeding.

Q. That request was made by the Public Service Commission? A. A regular letter came over transmitting maps showing the property to be taken and requesting us to take it in fee simple in accordance with a route which had previously been adopted.

Q. Yes and was there any particular reason expressed in the letter as to why the condemnation should be for the fee? A. No, sir. Simply a formal letter stating that they transmitted maps adopted by the Public Service Commission and a memorandum accompanied those maps stating the route for which the land was necessary and asking us to take all steps necessary to acquire the land by fee simple.

Q. You have knowledge of other proceedings brought at the request of the Public Service Commission? A. Yes, many of them.

Q. Is it the practical, or the invariable custom of the Commission to require that the condemnation be of the fee simple title? A. Well, I can't say that there has been any regular custom either way; there have been a great number of proceedings where they have asked to have an underground easement taken but in this case I don't think they could have done that because, as I understand it, the railroad is to be an elevated structure through the greatest part of this property.

Q. Where the condemnation is a surface act do they invariably require the fee, as far as your knowledge is concerned? A. I can't—you mean where the subway is to be—not the subway but the rapid transit is to be an elevated structure?

Q. Where it is an elevated structure do they require that the fee be given? A. I don't believe we ever had private property taken as far as I know for an elevated structure prior to this proceeding except in the public streets such as the Westchester Avenue proceeding and all the Fort George proceeding where the elevated structure was built in the public streets and where we condemned the easements of light, air and access of abutting owners. In every other case which was down in the thickly built up portions of the city, the rapid transit road was to be an underground road and no necessity came up for it.

Q. In your investigation, having commenced this proceeding as required, did you find that there had been, under the rapid transit development, a prior location of the White Plains connection? A. I don't quite understand that. They had adopted the route, the Public Service Commission, for the approval of the Appellate Division of the Mayor, and after taking all the steps required by law in adopting this route, they went through these thirty-nine pieces of property prior to our getting the papers to condemn the property.

Q. Had there been a prior adoption of any other route? A. I don't know anything about that.

Q. You don't know anything about that? A. No, sir.

Q. Will you describe the property that you were required by the Public Service Commission to condemn under those proceedings? A. The property to be condemned in that proceeding consisted of thirty-nine parcels of land which began on the southerly side of Unionport near the east corner of the Bronx Park and ex-



tended in the arch of a circle southwesterly to a point about 150 feet north of 167th Street at the Bronx River. In other words parcel No. 1 was a parcel fronting on the easterly side of the Bronx River about 150 feet north of 177th Street, and parcel No. 39 was a parcel on Birchall Avenue which is just north of Unionport Road.

Q. Was there any of those parcels distinctive in size or quantity? A. Yes, sir — parcel No. 29.

Q. As a result of your application commissioners were appointed? A. Yes, sir.

Q. And who were those commissioners? A. Charles L. Houseman, Francis B. Kenney and Abraham Sebring.

Q. Had you any previous personal knowledge of Mr. Hoffman as a commissioner? A. I knew him before that.

Q. Had he ever sat as a commissioner in other condemnation proceedings? A. Yes, sir.

Q. To what extent? A. Well, I am unable to tell the extent; he had been on one or two cases of which I had charge.

Q. And what about Mr. Sebring? A. I had never seen him before. I didn't know anything about him.

Q. How about Francis B. Kenney? A. I had never seen him. I didn't know anything about him before.

Q. And since the institution of that proceeding and up to the present time, have you ever known Mr. Kenney's connection with a Mr. John J. Mackin? A. I don't know anything about that.

Q. Have you heard anything about it; has it come to your knowledge in any way? A. No, I can't say that it has come to my knowledge. I may have heard some statement by somebody that he had some connection with Mr. Mackin. My memory isn't very clear on that.

Q. Had you ever had application to protest the awards made by any one of these commissioners? A. Yes, sir.

Q. Which ones? A. Mr. Hoffman was a commissioner on some of the cases in which I had to oppose a confirmation of the report.

Q. What was the result of your opposition so far as Mr. Hoffman's awards were concerned? A. Well, sometimes the court confirmed the report and sometimes they set it aside.

Q. In how many instances did they confirm his reports to your knowledge? A. You mean where there was an opposition?

Q. Yes, sir. A. Well, in the matter of a Second Avenue court-house, the City opposed the confirmation. That is down at Second Avenue and Manhattan, and the court confirmed the report of my opposition.

Q. And in how many cases, to your knowledge, were his awards thrown out? A. At 138th Street and Mott Avenue; in the Rapid Transit proceedings in the Borough of the Bronx, Justice Brady set aside the award as to two of the parcels; and in the matter of Walton Avenue and 146th Street in the Bronx Mr. Brady set aside the awards as excessive.

Q. These parcels that you have described as under this application for condemnation, did they include any ground or property that had been previously public property or parts of streets or highways? A. Parcel 29 as far as the evidence developed in this condemnation proceeding through the center of parcel 29 was concerned showed that a street called Adam Street had been laid out on the city map. I tried to establish there that that road-bed was a physical road-bed in the street that was laid out on the city map and that Adam Street ran through the center of Parcel 29. I put in evidence to show that that had been a public road for many years. It was known as the Old Road to West Farms. There was a street there, but the railway company put in appropriate resolutions, etc., and it was closed. The closing was done in 1912, and they also put in a new or revised city map which left that street off of the street systems shown on these maps.

Q. So that, as a matter of fact, included a part of this property which was required to be condemned, and within a year of the application for the condemnation the Board of Estimate, by resolution, had abandoned this so-called Adam Street? A. Yes. It had been closed, and I think that the condemnation was started in December, 1912—I should have said 1913; it was November or December, 1913, that the condemnation was started.

Q. And abandonment or closing of a part of the property by the Board of Estimate was when? A. As I recollect the evidence, it was in 1912—the early part of 1913 that Adam Street was closed.

Q. And upon application of the Boston & Westchester Railroad? A. Yes; the papers so showed that. All I know about that clos-

ing matter was with reference to the resolutions and papers that the Westchester's counsel put in evidence.

Q. At the time that that closing of the road was had by the Board of Estimate under its process of resolution, was there any reservation made for the city for public uses? A. Not that I can recollect.

Q. The evidence didn't show it? A. I am quite sure that the evidence didn't show any such reservation.

Q. When did the Westchester & Boston acquire its franchise or privilege in the City of New York? A. It acquired its first franchise by an ordinance of the Board of Aldermen adopted in 1904 — I think in August, 1904. Then there were a series of amendments to this ordinance changing different parts of the route within the City of New York on minor matters and then there was a radical change of the route from about Unionport Road south. In 1911 an ordinance was adopted and an agreement entered into with the city dated August 2, 1911.

Q. When did it begin its fiscal development within the city? A. The evidence in this condemnation proceeding does not show when its development was begun within the entire city, but it shows that as far as parcel 29 is concerned that they began to build the right of way that was laid out on the ordinance of 1904 between October, 1909, and July, 1910.

Q. In that fiscal development did they do any tunnelling in or near the city? A. I think the evidence in the condemnation, which is the sole basis of my information, showed that they tunneled through what is known as Morris Park Hill and at other points that I don't recollect now.

Q. And the evidence indicated as to what was done in the excavation, did it? A. The evidence of Mr. Miller, the President of the road, showed that John O'Brien Construction Company building the New York, Westchester & Boston road in that vicinity had excavated in that neighborhood and had dumped the dirt on what is called parcel 29 in this condemnation proceeding.

Q. That dirt from the excavation produced what result on Parcel 29, so-called, physically? A. It made a mound there on parcel 29 which the railroad called an embankment. It really produced three mounds, which were separated from each other by concrete

abutments. Provision had been made for concrete abridgments to bridge over what was known as Adam Street, and there was also a proposed street laid out — a paper street — called Berry Street which was to run through parcel 29 that had never been legally opened. In the anticipation of the opening of these streets the railroad had made provision for putting bridges over these abutments so that they left three mounds of fill, with a slope of forty-five degrees. The mounds were about twenty-five feet high and they were graded down and arranged for four tracks. They had built some posts for overhead electric construction.

Q. What was the ultimate effect as regards these separations — are they continued now or not? A. You mean today?

Q. Yes, A. I don't know. I think they have filled in between these abutments — I mean the city — in building the subway.

Q. The abandonment of these streets, or highways, avoided the necessity of maintaining those bridges? A. Yes, sir.

Q. And what was the width in feet, as near as you can estimate it, of the top of this embankment? A. The width varied; it ran on an average, I should say, of about forty-five or fifty feet in width.

Q. When was this embankment completed and used by the railroad company — the private corporation — the Boston & Westchester? A. You say completed and used?

Q. Yes. A. It was never used by the railroad company as far as the evidence showed. The embankment was completed in the sense that it was leveled off at the top according to the evidence of Board, the engineer of the railroad company, in July, 1910, but they never laid a rail on it or a tie or did anything after that day — July, 1910.

Q. And has anything been done with it up to the present time as far as you know so far as the railroad is concerned? A. Why, no. The railroad company couldn't have done anything after February 13, 1914, because on that date in the condemnation proceedings the city took the title to the property in fee simple, and the railroad had no right to do anything on that.

Q. And took the entire property? A. Yes.

Q. Now, what was the plan of the city, if you know, as regards the use of this property? A. I don't know about that.

Q. That didn't appear? A. No.

Q. (By Senator Thompson.) What was condemned, the Public Service Commission ordered condemned, didn't it? A. Yes, and under the rapid transit act the Corporation Counsel conducts a condemnation, but as a rule of law it doesn't matter what it is worth to the condemned or what he is going to do with it when he takes the entire property so that no question of consequence or damage arises. I didn't concern myself with just what the city intended to do there and what it did do. It wouldn't have any bearing on the case.

Q. Who were the members of the Public Service Commission at that time — at the time this application was made? A. According to my best recollection, there was Edward E. McCall, J. Sargent Cram, Robt. C. Wood — I think Mr. Maltby was still a member, and Mr. T. S. Williams. I may be mistaken about that — that's my recollection at this time.

Q. During your investigation of this matter was it disclosed to you in any way that the Public Service Commission or any member of it had made offers or tentative offers for this particular property? A. I don't know anything about that.

Q. What was the demand of the railroad in that condemnation for these parcels? A. You mean what were the figures of the witnesses that were put on?

Q. Yes. A. Mr. Miller, the President, who was called on behalf of the railroad company as an expert railroad man testified that the property had a value for railroad purposes, because of its special adaptability for those purposes, of \$613,000. Then began a variety of theories. Judge Clarence Davis, a real estate man, was asked to give the intrinsic value, and he said it was \$325,000 for this land in parcel 29 without any of the so-called structures or improvements. They then called a Mr. Von Moskowitz, who is an agent for the Pennsylvania Railroad, who said that the land level with the abutting streets and exclusive of the concrete and the portion that was filled in, had a value as a right of way for a railroad, if a railroad wanted it, of \$475,000. They are the only witnesses they called on, but they then called some contractors and tried to show by their separate testimony the value of the fill and concrete work that was on this parcel as a separate item.

Q. Right at this point, Mr. Mayo, as a physical result what benefit were these concrete structures? A. Why the city took the position through two well-qualified real estate experts that this concrete and the fill constituted an abandoned right of way and there were no railroads in the vicinity to buy, none but the Westchester and Boston, and as it had its right of way further to the east, it wouldn't have been a prospect as a purchaser for that.

Q. Well, having been originally constructed to permit the city to continue its streets through this parcel, and the streets having been abandoned, they had no physical value in any way? They might have been originally without any objection or criticism, is that not so? A. That was one of the grounds of the city's position that that fill and all structures when they intended to build a railroad became valueless and meant an incumbent on the line when they changed their route in 1911 and built their line in another direction.

Q. What was the expressed opinion of the city's experts as to the value of the property? A. The city's experts said that the property was worth — Mr. Bernard H. Weisker, who was real estate expert there of thirty years standing, said the property had a market value of \$97,500, and John H. Murphy, another real estate expert, said that the property was worth \$96,000.

Q. What did they say as to the question of that addition of earth? A. They said it did not add a penny to the land, to the value of the land.

Q. Was there evidence in that proceeding as to the value of the adjoining lots and land not affected by this filth? A. Yes.

Q. In this same vicinity? A. Yes, but they were much more valuable per lot than this large piece of acreage and it was difficult to get land to compare except that I brought out that President Miller, when the proceedings were started in 1909, to condemn five acres of land which included part of parcel 29, swore in the petition that the value of this five and seven-eighths acres of land was \$96,000, or about \$13,000 an acre, which was very close to what the real estate experts for the city swore it was worth in 1914.

Q. What is the acreage of parcel 29? A. It contained nine and three-hundred-twenty-six-thousands acres.

Q. And what part of it is elevated by this fill? A. Thirty per cent of it was elevated by the fill, the remainder of the parcel was low ground and had trees over a considerable portion of it—trees of a considerable size.

Q. And how high did you say this elevated was? A. The top of it was about twenty feet or twenty-one feet above the surrounding portion of parcel 29, and above the grade of 180th Street, in front of it.

Q. And the elevated portion will be that part that will be used by the dual system in the extension of White Plains? A. I don't know about that. I passed there recently and it seemed that they might have filled in there. I don't know anything about what the City is going to do there.

Q. If that elevated portion is used for traffic in the extension of the dual system, how can the balance of it be used for railroad purposes in connection with that system? A. I haven't given that any consideration.

Q. Was there not some evidence given as to the impossibility of the use of the balance of acreage without the enormous expense incident to filling it up to the twenty-foot level? A. I started to to produce evidence on that and the railroad stipulated that in order to get the full use of parcel 29 for railroad purposes, it would be necessary to get an additional yardage of 212,500 cubic yards of fill to put in concrete walls and about 17,000 cubic yards in addition to that for other concrete work to be done, and that there would have to be excavation to the extent of about 15,000 cubic yards.

Q. And what was the estimated expense? A. Well on the units that the railroad adopted, covering the fill that was there and the concrete that was there, including this extra work that would be necessary to make the whole of the parcel available, the amount would come to about \$300,000, if their units are correct. I contended their units were unfair, but on those same units to complete that parcel it would have cost \$300,000.

Q. And based on the city's estimate of fill of that character, how much would it cost? A. Why we took the position, and we showed by our cross-examination of the contractors, that contractors in that vicinity were paying for the privilege of a place to

dump their fill. One man who called there whom I remember — Fred Snyder — said that this fill was worth \$1.25 a yard. He said that he had control of a portion of the Watson estate, a piece of ground in the Bronx, and that contractors paid him for the privilege of dumping on it, and we took the position that that was a trifling sum to pay.

Q. The present fill is of a sufficient width, you say, for four tracks? A. Yes, it was designed to have four railroad tracks of standard gauge laid on it.

Q. (By Senator Thompson.) What railroad was it that originally acquired this property? A. New York, Westchester & Boston.

Q. They acquired it from whom? A. Half of it from the land associates from this street called Adam street north. They acquired that from the land associated together with other property that ran up to Morris Park Avenue. From Adam Street south they purchased by private purchase from the trustees of the Neill estate.

Q. Who are they? A. I don't know. The names didn't appear.

Q. Did the city ever own this property? A. Before?

Q. Yes. A. Except Adam Street, the city had a public easement through there.

Q. Did the railroad acquire that from the city? A. They had it closed. They claimed that they owned it. When the Board of Estimate closed it in 1912, then the railroad claimed that, as they owned the abutting land on both sides of this street, they became the owners of that property.

Q. Did they pay the city anything for closing the street? A. I don't know about that. I don't think they did pay anything — yes, I believe they did, but I didn't look into that at all.

Q. The main point was getting it closed by the Board of Estimate? A. Yes, sir.

Q. When you started the condemnation proceedings, who was the owner of the property? A. New York, Westchester & Boston Railroad. They claimed to own this, and that matter is now being gone into, and one of the points that I am fighting is that the New York, Westchester & Boston Railroad Company did not prove



that it owned the entire parcel. The matter is now pending before Justice Millin and on April 7 the city moved to set aside the award. The railroad put in a voluminous brief and the city put in one.

Q. Was there any evidence given during those proceedings as to the reason for the condemnation of the entire nine acres of parcel 29? A. No, sir.

Q. Was it developed at any time? A. None except this — that the petition stated and the resolution of the Board of the Public Service Commission stated, that that land was needed for public purposes, the purposes being to construct, maintain and operate the White Plains connection of the dual system of subways. That's about as far as any statement was made of the purpose for which it was to be used.

Q. Was there any question or intimation that the entire acreage was required for yardage? A. The New York, Westchester & Boston Company's counsel, Mr. Buell, tried to show that their plans contemplated using this as a storage yard for cars but the Commissioners ruled their testimony out. They did win out in one or two instances, I believe, that they were holding it to use as yards for storage of cars.

Q. And with the physical location of the Boston & Westchester, was that use possible? A. Why it was possible, but I took the position it wasn't remotely probable, because I showed by the evidence that they had only thirty cars. They had no locomotives — they used electric engines, and they had a yard opposite fully equipped, a yard fronting on Morris Park Avenue, directly opposite parcel 29, that had a capacity of 112 cars. They also had another yard for the storage of cars at White Plains and side-tracks for more cars at New Rochelle. Hence they didn't have any need for the storage of cars under the circumstances.

Q. (By Mr. Smith.) Assuming the construction of even four tracks on this elevated embankment, what is the physical possibility of the dual system using the balance of the nine acres for storage yards? A. I haven't given that any consideration. I am not able to express an opinion on that.

Q. Well, is there any way of getting to that balance of the nine and a half acres from the embankment except by this so-called additional fill that you speak of? A. I don't quite understand that.

Q. I know nothing about the physical location myself. Now, there is an embankment there, isn't there? A. Yes, sufficient for four tracks.

Q. Assuming that the dual system uses that entire embankment for track purposes on this White Plains extension, what is the physical possibility of getting to the balance of the nine and a half acres? A. Why you would have to have a flight of steps to get from the top of the embankment down to the remainder of the parcel 29, because that was twenty feet below it.

Q. Exactly! So that there is now no physical possibility of the use of the balance of that acreage in connection with any possible White Plains extension of the dual system? A. I don't know anything about the conditions now, and I don't know just what the White Plains extension plans called for. I didn't give that any thought at all.

Q. At the time of the condemnation there was no plan of which you had any knowledge? A. No.

Q. Who is the expert — Clarence Davis? Do you know anything about him? A. He is a real estate agent and appraiser and broker that has appeared as expert against the City of New York many times. He has appeared in a number of condemnation proceedings. He appeared as witness under the circumstances I have stated and tried to give the intrinsic value of this parcel.

Q. Do you know whether or not he was ever employed by the Public Service Commission? A. I don't know about that. I heard that he was.

Q. Who was the other expert that you have spoken of? A. F. A. Von Moskowitz, an agent for the Pennsylvania Railroad, and Mr. Miller were the only ones who testified on land value in parcel 29.

Q. Do you know whether any evidence was submitted as to any possible relation between Mr. Miller and the Mr. Miller who is in the Bronx? A. Nothing of that sort was gone into to any considerable length.

Q. Was it ever called to your attention in any way? A. No, sir, I never heard of that that I can recall.

Q. How much of the other parcels, exclusive of 29, were actually used in the construction of this embankment — what pro-

portion of them, or were they used in their entirety? A. You see, I don't give the slightest thought to what the city was going to do about that matter. I don't know what was done for the reason that I took the position in the condemnation proceeding that it didn't matter what the city was going to do; whether they were going to use that fill or not was none of the business of the Commission of Appraisals, because the property should not have been valued on what the city might do with it. I think some suggestion was made during the trial by the railroad company's lawyer that the city was going to use that fill and as they had done all the work in getting it there and as the city was going to use it in building this elevated railroad, the city ought to pay for it. I opposed all such efforts and no evidence along those lines was received. And at the time of this condemnation, so far as the railroad company was concerned, it had previously located its right of way at another point further east.

Q. So that for right of way purposes this fill was no longer a necessity for the railroad? A. It was no longer a necessity for that railroad or any other. As a matter of fact, under an agreement of 1911 the New York, Westchester and Boston Railroad Company surrendered its franchise to close the intervening streets that would be necessary in order to use this for a right of way.

Q. So that there was no existing franchise permitting the use of this for private railroad purposes? A. No.

Q. Boston, Westchester & New York, or any of them? A. No.

Q. And it stood in the position of a parcel of land that had been used as a dumping-ground for excavation? A. Yes, but it was not a mere dump. At the time that fill was put there they had a route adopted to go back to the southwest through this parcel 29 with a four-track right of way. After the fill was put there that right of way was abandoned as they had no use for it then.

Q. So they had done work on parcel 29 with a view to making this railroad embankment with a capacity of four tracks. A. Yes.

Q. And did any of the other parcels on which condemnation proceedings were applied have fill on them? A. No.

Q. What was the character of the other parcels? A. They

were either vacant city lots abutting on regular city streets or had two-family frame houses on them.

Q. And what was the award in regard to those other parcels?

A. Those awards were very reasonable and the city moved to confirm them. A valuation of \$2,250 was placed on those lots and the Commission awarded that sum. In view of the greater struggle that was to be made over parcel 29, we thought we would confirm those figures.

Q. So that there was no question about those? A. No, sir.

Q. And did it ever come to your attention directly or indirectly that a member of the Commission had made a tentative offer to the Westchester road of a sum approximating \$630,000 for parcel 29? A. I don't recollect the figures, and I don't know anything about it personally, but I have a vague recollection that at some time I heard a member of the Commission had been in position to make an offer — had stated he would make an offer. I went over and saw Mr. Harkness and Mr. Butler of the Public Service Commission and they said it wasn't true — that the Public Service Commission was never in a position to make any such offer, and that is why they had the condemnation.

Q. Did they say that it was not true, that the offer had not been made by the individual member, or did they say that they, the Commission, would not stand for a confirmation of such an offer? A. I really don't recollect much about it. What I heard was so vague that I really didn't go into it. I remember distinctly though that Mr. Harkness and Mr. Butler told me that the Public Service Commission had never made any offer at all. They saw that they couldn't agree on a price with these people and so they sent the property into condemnation.

Q. In connection with this matter, did it ever develop in the proceeding that the City and State of New York had assisted this railroad company by legislation in acquiring a part of its right of way? A. I don't know about that.

Q. I speak about the Hoff bill, so-called, now. A. I can't answer that question. You mean toward getting the franchise of the railroad, etc.?

Q. Yes. A. I didn't look at the papers with that in view. It was put in the papers to show how the company was incorporated,

and the papers would show just what was done. So far as I can recollect, nothing of that sort appeared—that is, that the city or state added them by legislation at that particular point. I don't recollect anything about that.

Q. That didn't come within your knowledge? A. No, sir.

Q. (By Senator Thompson.) As I understand this proposition the city is acquiring that old abandoned right of way of the New York, Westchester & Boston Railroad. It isn't of any use to the Westchester & Boston Railroad at all. A. Well, they say that in the future they will undoubtedly need it for a railroad yard to store cars in.

Q. But that's speculative? A. Oh, yes!

Q. The lines of the New York, Westchester & Boston are controlled by the New York, New Haven & Hartford, aren't they? A. Yes.

Q. And they started to construct a railroad and abandoned the construction? A. When they adopted a new route in 1911.

Q. Are there any improvements that have been made on this right of way that are of any value to the city? A. I didn't go into that phase at all.

Q. What is the city going to do? A. I don't know about that. I was very careful to oppose that deal. The railroad tried to take the position that this thing would be valuable to the city, and I said I thought I couldn't see what the city would do with it, because it wasn't what the property was worth to the city, it was what the property would sell for in the market independent of the New York City condemnation.

Q. You didn't go back far enough to find out how much this cost the Westchester? A. I probed into that, and they couldn't tell me. Mr. Miller was asked how he valued the fill, and he said he valued it in the following way: that 87,000 yards of the total of 154,000 yards of fill was broken road that had been blasted out by the John O'Brien Construction Company. He then took the remainder of the fill which was not broken off at so much a yard and averaged that up with what they paid, but he couldn't tell me what any part of it cost.

Q. Did you find out what the original real estate cost them to acquire? A. No, I didn't go into that. There wasn't any need

to go into that when I had Mr. Miller's sworn statement. I understood they paid high prices.

Q. (By Mr. Smith.) Did you make any comparison and submit any evidence with reference to any other fills? A. I didn't want to go into that. I brought out from their witnesses that there were a number of contracts for filling streets there in the Bronx where several yards of earth was acquired ranging from 18 cents up to 38 cents a yard that the city paid for.

Q. How about the concrete, did you make any comparison there? A. No, except that I took the position that the structural value of that concrete had nothing to do with the lands. Mr. Miller admitted that that large retaining wall did not retain anything. It didn't have an ounce of dirt up against it when we took title, and I was afraid that if I put on an expert to value that concrete and my expert said he would have to allow at least \$5 a yard for its structural value, that the Commissioners might misunderstand that that was an admission that it was worth that much a yard. The position they city took was that regardless of other things the property couldn't have been sold for any more because of those structures.

Q. Now, for the sake of the record, to get it clear—this matter seems to be doubtful among some of us—the total length of this embankment was included in the so-called parcel 29. A. No, the embankment didn't extend the full length of parcel 29.

Q. Yes, but the total amount of the embankment was within parcel 29? A. Yes. It ran into the other embankment at the northerly end.

Senator Thompson.—The rest of your facts you will have to get from the Public Service Commission, won't you? A. Yes, sir.

Senator Thompson.—That's all then for this morning.

Senator Dunigan called some of these matters to the attention of this Committee in relation to the 149th Street station and we made a promise to go up there and make inquiry in regard to them. We will go into that matter, and we understand that the 149th Street station matter will be taken up in the meantime by the Public Service Commission and that they are now handling the matter. We

will be glad to hear from Senator Dunigan on any matters he thinks the Committee ought to know about in regard to the community that he represents which might be of value to our Committee.

Mr. Smith.—Mr. Mayo, do you represent the city in any other condemnation now pending in the Bronx? A. Yes, in that of Church E. Gates. We took an easement—an underground easement—under the property of Church E. Gates just south of 137th Street and runs from the westerly side of Mott Avenue for some distance. The Commission made an award. I moved to confirm it, but the property owners opposed the Commission, and that is now pending. There is another place at the Harlem River and 135th Street. We are now taking an easement under the property of the Harlem Transfer Company.

Mr. Smith.—That is now pending? A. Yes, that hasn't been completed.

Mr. Smith.—Those are the only ones? A. Well, they are the only ones that are now pending; the others were closed up.

Senator Thompson.—The point is, how do you get at an appointment up there? A. We apply to the court on a verified petition in rapid transit matters. We get the Public Service Commission to verify the petition setting forth the jurisdiction of facts.

Senator Thompson.—Doesn't either side ever make a suggestion? A. I don't know anything about that.

Senator Thompson.—In our practice, when I practiced law, you would appoint Condemnation Commissioners. Each lawyer would submit to the judge a list of ten names, and the judge would pick out of the bunch twenty names. Do you do that way here. A. I don't. I don't know anything about that personally.

Senator Thompson.—You simply submit your petition, and the next thing you know the Commissioners are appointed? A. As far as I know, yes. In some of these I have heard that that has been done as you saw, but I am not supposed to know about those things, at least I never heard of a property owner doing it, and I don't know that it has been done in any of these cases.

Senator Thompson.—Are these Commissioners in condemnation proceedings distributed as a matter of judicial favor or are they arrived at and appointments made from the particular fitness of each to be Commissioners? A. The only thing I can do is to make an assumption. I imagine the judge appoints them because of their fitness for the job. I have heard rumors in the papers that sometimes judicial favors does play a part.

Mr. Smith.—Does the Public Service Commission have representatives in these proceedings—legal representatives? A. No, the Corporation Counsel's office conducts them.

Mr. Smith.—Did the Interborough Rapid Transit Company have a representative at the hearing? A. They had nothing to do with them.

Mr. Smith.—How many hearings were had on this parcel 29? A. As I recollect it, excluding executive sessions, there were about 150 sessions on these thirty-nine parcels.

Senator Thompson.—Senator Dunigan is going to make a statement for the record.

Senator Dunigan.—Mr. Chairman, Members of the Committee: This matter was brought to my attention by the United Tax-payers' Association of the East Bronx because of the fact that, judging from the known values to the members of that association, the awards which the railroad company sought were exorbitant.

Of course, then the question of the availability of that property for railroad purposes as against the use of it for ordinary purposes, such as building purposes, etc., entered, and the railroad company contended that the property was suitable for railroad purposes. The people, and I myself, have contended that the property which the railroad company has sought to get such an exorbitant price for is not available for railroad purposes, and is nothing more than a low piece of land filled in with a great big embankment of earth and the concrete retaining wall which, no doubt, has been spoken of, and which is really more of a detriment to the property than an advantage. Of course, the question enters there of the expert testimony by the city's expert and by the railroad company experts, and as Senator Thompson has



brought up the question as to how these Commissioners were appointed, as to whether they were appointed upon their fitness or through political favor, it might be well to mention that the question in the mind of the people of New York is: "Why is there such a great difference between the value of property as testified to by the experts before the city and by the experts for the railroad companies?"

There is a great need for legislation, I think, so as to bring about some solution of the matter whereby an expert can come within a very fair percentage of the value of a piece of property—a value that is fair in so far as the other expert's opinion is concerned, and not have one man go on the stand and testify a certain price and then have another man get on the stand and testify that it is worth 100 per cent. more than the first expert testified.

The particular case in question I think is one where the railroad company's expert has testified fifty or one hundred per cent. more than the city's expert testified. There is something radically wrong there. That is something that should be looked into.

Senator Thompson.—I assume these condemnation commissioners are just about like the ordinary run of them. They will sit there and listen to the experts on one side testify to \$300,000 and they will listen to the experts on the other side testify to \$100,000, and when the matter gets finally submitted to them they will split the difference and say \$200,000—and that is the way they get it.

Senator Dunigan.—That is very unfair to the tax-payers of the city.

Mr. Smith.—Just a couple of questions, Senator Dunigan, to assist us as a matter of record. The dual system extension, White Plains extension so-called, was originally located at some other point than this embankment, and condemned property, was it not?

Senator Dunigan.—Yes, sir, it was.

Q. (By Mr. Smith.) And what was that original location?

A. (By Senator Dunigan) I believe that they contemplated running that line up through Morris Park Avenue.

Q. From Boston Road and East 177th Street through Tremont Avenue? A. Yes, to Morris Park Avenue.

Q. To White Plains Avenue? A. To White Plains Road.

Q. Now that line would be through the public highway? A. It would.

Q. And the right of way would be without cost to the dual system? A. Exactly!

Q. As against the sway of the \$600,000 that was obligated by this system? A. Exactly!

Q. Assuming that the original plan was pursued, what would be the method of the Boston & Westchester to get to that subway extension for the purpose of taking care of the suburban traffic — how would that be reached if it could be reached at all? A. Well, they would have to necessarily intersect; one would have to cross the other. There is no reason why a junction station couldn't be constructed at that point where these roads would intersect and one run underneath the other the same as at the present time the lay out provides for a spur from 180th Street and Boston Road station over to the station at — an extension instead of a spur, at the Interborough extension. The extension itself runs right alongside of the tracks, at least out of the New York, Westchester & Boston station at 180th Street, and they intend to construct an injunction station there, or a transfer station. But that station could have been erected no doubt where lines would intersect right at Walker Avenue or Tremont Avenue, as they call it, if the original line had been carried out.

Q. And how far would that be from the 180th Street contemplated station? A. Why about a quarter of a mile.

Q. As a physical proposition, which is of greater advantage to the public? A. Well, I think that the original lay-out would have been of greater advantage to the people, judging from the traffic which is bound to come through the east and west from the spurs.

Q. So that the expression of your judgment would be fairly that the right of way is now one of expense, as against one of absolute freedom of expense? A. Absolutely!

Q. And that the public's accommodation has not been served in the same degree by the present plan as by the original plan which was abandoned? A. I don't believe it has. I believe that in

changing that route that somebody's interests were being taken care of, either property owners that saw fit to have their property taken, or something was done there in their favor.

Q. If you have any understanding on this subject, what do you understand was the origin of this suggested change? Who invented it, in other words? A. That I can't say.

Q. During the discussion, Senator, didn't it come to your knowledge directly or indirectly that the Public Service Commission or any member of it had made a tentative offer for this parcel 29?

A. Yes, I heard of that.

Q. And what was the figure which it was proposed at that time would be paid for that parcel to the railroad company, do you remember it? A. I don't just recall what the figures were.

Q. \$630,000 — does that refresh your recollection? A. I don't remember what it was.

Q. And do you know what number of the Commission made that offer? A. I think it was Commissioner Eustis.

Q. And what position, if any, had Commissioner Eustis occupied with relation to Bronx Park prior to becoming Public Service Commissioner? A. He was Park Commissioner.

Q. And had a personal knowledge of the situation up there, or should have had? A. Oh, yes, he should have had!

Q. Now, I haven't seen this property, and I would like to locate this strip containing nine and a half acres. Where does that lie with relation to Bronx Park property? A. Why, it is on the southeast — About the southeast corner of Bronx Park, about 400 feet west of the westerly side of Morris Park Avenue and a few hundred feet north of 180th Street.

Q. Are these parcels other than parcel 29 so located that they will be used in their entirety for a fourth track White Plains extension? A. I don't believe that the entire area will be used for the fourth track.

Q. What proportion of the parcels other than parcel 29 will be actually used for railroad purposes, in your opinion? A. Why, I can't just answer that. I would have to refer to a map to do that.

Q. I see.

Senator Thompson.— Senator, we are much obliged to you and if anything else develops around your way, let us know about it.

Senator Dunegan.— I might say there is a question of several streets that were closed up there under strange circumstances that the Committee might want to take up.

Senator Thompson.— What was that ?

Senator Dunigan.— An agreement was made, I believe, by the President of the New York, Westchester & Boston Railroad Company to leave one or two streets running from Morris Park Avenue, and after they had received several assurances from President Miller of the railroad last mentioned and Park Commissioner Higgins, I believe it was, that their rights would be served, and that the streets which were already laid out upon the map by the city authorities — that those streets would be left open so that the people would have a right of way into Bronx Park, instead of carrying out their intentions and their promises, they closed up those streets and left them without any entrance to the Park whatever. Therefore, they have to go around about a mile or a mile and a half or two miles before they can reach the entrance to the park. The circumstances under which those streets were handed over to the railroad company have always been a mystery to us people and we have never been able to get at the bottom of the proposition and the people in that section are constantly trying to get their streets back so that they can get an entrance into the park at that section.

Senator Thompson.— When was that done ?

Senator Dunigan.— That was done in 1911.

Mr. Smith.— Do you know whether or not the railroad paid anything for the closing of Adams Street on parcel 29 ?

Senator Dunigan.— I do not. I don't believe they did.

Senator Thompson.— We will now suspend till 2:30 in the afternoon. (Adjournment.)

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#### AFTERNOON SESSION.

The meeting was called to order at 2:45. Senator Thompson presiding.

Mr. Peter Brady.— I have a letter here which I wish to read before the Committee, as follows :

“ June 12, 1916.

“ Hon. Geo. F. Thompson,  
“ Municipal Building,  
“ New York City.

“ Dear Sir: On June 6 I handed you a letter which commanded that your Committee make an investigation for a number of labor unions whose wires were tapped by the Police Department, as we have reasons to believe that a large number of the names of labor union officials are on the list submitted to your Committee by the Police Commission, and we must insist, in justice to ourselves and our unions and to the public, that the reason for the tapping of these wires be made known. We are not satisfied with the evasive or flimsy excuses of the Mayor or the Police Commission that they suspected that a crime was to be committed, but we do want and insist upon this; that all of their suspicions and the basis for their supposed suspicions be made public. We want and insist upon securing the transcript of all the conversations which have been taken down by the police when they were listening in over these wires. If our unions have any members under suspicion for committing crimes we want to know it. If there are officers of unions whose wires are under surveillance and suspicion by the Police Department, the rank and file of those unions, as well as the employers with whom they have to deal, in representing those unions, want to know the basis of those suspicions, so that if any other public official suspects any trade union of a crime they will not have to go to the trouble to tap the wires.

“ The unions will be only too glad to render every assistance. It has already been developed by the publicity given to those methods of wire tapping by the police that only a small percentage of the wires tapped are listed with the telephone company. There has been a mistake made between the list of the Police Commissioner and the list of the telephone companies.

“ According to the list already made public that 350 wires were tapped, that would mean one subscriber to every thou-

sand whose wires were under suspicion of being used for criminal purposes by the Police Department, which I believe is an exceedingly high number of criminals.

“ This public statement of the police also considered in connection with the announcement that thousands upon thousands of wires are tapped about which the telephone company is never informed, and of which sometimes no record is kept, leads us to form only one conclusion, which is: That the private use of the telephone is no longer a safe and confidential method of conducting business or transmitting information. We, therefore, insist that your Committee make known the full names and numbers upon the list furnished you by the Police Department and we also insist that your Committee secure from the Police Department a complete list of all wires that have been tapped by them and a transcript of the conversations which were taken.

“ When the Police Department furnishes your Committee with this information, then, and only then, will the public know if there was any basis for their suspicion that a crime was about to be committed, and the public will know at the same time if the Public Service Commission has been carrying out the indiscriminate tapping of wires for only the detection of crime or for some other ulterior purpose.

“ In so far as the unions are concerned, our officers and the members realize that a number of wires that should not have been tapped were tapped by the police in their over-zealous performance of their duties.

“ We also want your Committee to make public the relationship between the Police Department and the so-called private detective agtncie asnd make public the private understanding that permits the Police Department to allow these private agencies to tap wires and install detectographs and detectophones, break into offices, smash desks, copy private correspondence, etc.

“ The public ought to know to what extent the so-called private detective agencies are supervised by the Police Department and what reports they furnish to the Police Department of their activities. It is a well-known fact, and your Committee should give it the most careful attention,

that the employes of these agencies are ex-convicts and people of such depraved moral standing in the community that decent people will not associate with them and that they could not pass the character test to become members of our union and the people who employ them at not any better.

"In contrast to this, we have the high moral standing of the rank and file of the Police Department, insisted upon by the most careful kinds of tests and examinations by Civil Service, but through the practice of these private detective agencies being allowed to run wild without any apparent supervision or responsibility for their activities they cast a cloud of suspicion over the entire uniformed police force of our city which should not be any longer permitted. We demand an investigation of the following detective agencies: Arber Detective Agency, Dougherty Detective Agency, London Detective Agency, Smithberger Detective Agency, Drummond Detective Agency, The Pinkertons, which we believe are operating under some sort of a so-called state license which permits them to continue every kind of criminal practice from burglary to murder.

"It is high time for the people of the City of New York to realize and understand the ramifications of these matters, so that steps may be taken immediately to curtail all the abuses of the powers which have been given them in conjunction with the Police Department.

"If your Committee will grant our request, I am sure you will be performing a service which will be appreciated not only locally but throughout the entire state and country. It will also be appreciated by the general public. We should thank you for the publicity already given to the Russianized secret service to which not only the union members are subject, but also the general public.

"Yours very truly,

"(Signed) Peter Brady."

Senator Thompson.—Now, Mr. Brady, I have the same idea with respect to this matter that I attempted to indicate to you when you were here before. We haven't any power at all under our resolution to investigate detective agencies, of course. I

think you probably appreciate that. By the way, you have mentioned the Pinkerton Agency. I feel obliged to say that I received a letter from them in which they speak of several matters. I will put it in the record. It is in my files at the hotel. But they evidently take your view in regard to tapping telephone wires. They seem to think it is improper.

The question of detectophones and the question of breaking into another man's office or his house—those are all subjects which couldn't possibly be taken up from the standpoint of the Public Service Commission or the Public Service Corporation. The question of wire-tapping, of course, is within the province of this inquiry, because it affects the telephone company, which is a Public Service corporation, and that was the reason that we entertained the subject in the first place and made what investigation was made in relation to the Seymour tapping and in relation to the tapping in the charities' matter. We went further in the investigation of the charities' matter than the Committee anticipated but it was only on the theory of fair play. A number of people wanted to make statements and we let them make them. I have been afraid that the province of the Strong Committee Investigation might have been encroached upon in that regard. In conference with Commissioner Strong, however, I find that he didn't personally feel that way and that he felt that the Committee was justified from the peculiar circumstances in going as far as it has. Of course, he couldn't have heard that testimony himself. He made the decision he did on the presentation of the conversations which were taken down. In his decision, as I have said here before, Commissioner Strong was exactly right.

The fact that some of these wires have been tapped seems to be admitted on all hands, and the fact that union wires have been tapped. The fact that there have been two kinds of taps appears. All those facts are before this Committee and probably sufficient facts on which to make a report regarding any members of the Public Service Commission with reference to the transporation act of the public utilities law.

And we, therefore, feel that this investigation should be taken up by some agency which is more nearly in existence for these subjects. For instance, the District Attorney has ample power to take up this whole thing and to investigate it all. I don't know his



attitude on the subject, but this Committee will be glad, I think, to turn over to the District Attorney all the evidence we have, including the list of the telephones and all the testimony which we have taken in executive session on this subject to do with it what he wants, if he would like to take it up.

I think you are right that the matter ought to be investigated. I don't believe there is any legal warrant for the tapping of a telephone wire by the police or any other officer. It may be that on a criminal prosecution for tapping that a jury might regard it sufficient offense if they were fortunate enough to find the evidence they were looking for in making the taps. But I don't think there is any law which permits police or anybody else to tap a telephone wire under the laws of this state. I think the matter should be investigated, and I think you should be permitted to know all the facts there are about it. I don't believe that as a general proposition public business should be in any wise conducted in secret. If we can't get everything by public handling, let's get along without some of the things. A public and free government is one conducted publicly in the interests of the public for whom it is maintained.

Now that's what I feel. I don't know that I talk for the Committee, but I think they are entitled to have these matters all known; that people are entitled to know about this. The people you represent are entitled to know what to do, what the course of procedure is and what warranted it.

There should be an investigation, and I think that the District Attorney has the power, and I wonder, Mr. Brady, if it wouldn't be agreeable with you people to take this up with the District Attorney, say tomorrow, and tell him that this Committee will co-operate with him in any way and ask him if he won't make this investigation?

Mr. Moss.—I think that he ought to have an opportunity.

Senator Thompson.—He has so many advantages. For instance he has the advantage of time; we are limited. We only have three weeks remaining.

Mr. Brady.—Mr. Chairman and Mr. Counsel, would it be possible for you to furnish me with a list of all the names and

numbers of all the unions that are on the list furnished to you of which you have a record. We want to know just how many of our organizations and members are under suspicion for crime, and we also want from your Committee, in the event that you have it, the transcript of the testimony upon which the police base their conclusions that there was a crime about to be committed and from which they obtained testimony to justify their suspicions after the wires were tapped.

Senator Thompson.—The Counsel is directed to give to you a list of the names of the unions tapped. You can get that on application.

Mr. Brady.—I would like to get it today. We have here a fair representation. We have a committee appointed by our committee to assist me in going into this question. It is not entirely here, but there are some members of that committee here.

Senator Thompson.—I also have the assurance of the Police Department that if you call there you will be given an explanation of all these taps.

Mr. Moss.—I understood that from Commissioner Wood.

Mr. Brady.—I can say the same as I said last week. When that information was carried to me it was in a sort of roundabout way. I think that Commissioner Wood is very familiar with my wire and with all the other unions in the city, and he knows that we would gladly and willingly call upon him or any other city official to assist in detecting crime. So far they haven't seen fit to call on us.

Senator Thompson.—I guess it would be hard to locate the Commissioner now.

Mr. Brady.—But he did know where to locate me at the time that he made this statement.

Senator Thompson.—That was made last Thursday?

Mr. Brady.—Yes. And furthermore, I don't want this information for myself; I want it for our labor organization—for the

benefit of the members of our unions who will realize and appreciate that they are under police surveillance at all times.

There is one thing that I would like to have you explain to me, Mr. Chairman, if you will, while the Counsel is looking for the list, and that is why your Committee has no jurisdiction over these agencies, inasmuch as they are sort of a public utility—these private utilities licensed by the state.

Senator Thompson.— The Comptroller of the state would have complete right to investigate these agencies.

Mr. Brady.— So we could go there also in the event that we fail to be successful with the District Attorney?

Senator Thompson.— That's my understanding.

Mr. Brady.— I am sure that our Committee will appreciate what your Committee has done in assisting us.

Senator Thompson.— We don't feel like shirking any work, and if avoidable we wouldn't shirk this subject or any other.

Mr. Brady.— May we ask you at the same time, Mr. Chairman, for the names of the strike-breaking agencies that are on your list, also the names of employers where strikes or lock-outs are going on, as in the garment industry? What we want to find out is if there is a corresponding energy upon the part of the Police Department in supervising a surveillance of the employers as well as the unions

Senator Thompson.— Well, as soon as you get this list of taps of unions, you will know then who would be likely to be on the other side of that controversy, won't you?

Mr. Brady.— Yes, sir.

Senator Thompson.— You can take that up with Mr. Moss.

Mr. Brady.— You might make an engagement, and we will come over.

Senator Thompson.— (To Mr. Moss.) What time would you suggest?

Mr. Moss.— Half past four, here.

Mr. Brady.— Well, then we will come back at that time.

Senator Thompson.— Does anybody else desire to have anything to say about this?

Mr. Brady.— There was a misunderstanding relative to when we were to appear and some of our people thought we would appear this morning, and they showed up at the appointed time, if they couldn't be here this afternoon. The Committee consists of the following: Hugh Frayne, General Organizer of the American Federation of Labor interested in protecting their interests; James P. Holland, President of the New York State Federation of Labor; Mr. Ernest Boehm, Secretary of the Central Federated Union; William Dower, Business Agent of the Photo Engravers' Union; Mr. E. T. James, representing the Central Federated Union; Mr. William Kelley, representing the Central Federated Union; Mr. Rudolph Modest, Mr. Edward F. McArdle and myself, representing the Allied Printing Trades Council; also Mr. Joseph Goldberg, representing the United Garment Workers of America; Mr. Louis A. Swartz, representing the International Photo Engravers' Union; Mr. Harrold Hamilton, representing the International Stereotypers' and Electrotypers' Union. I don't think I have overlooked anybody. I want to say that if it was necessary to have us come down in larger numbers, we could crowd this room. All with whom we have taken this matter up have left it with us to go ahead as far as we possibly can, but if it should be necessary to have them come down, we could get them here.

Senator Thompson.— Well, what is right is right, and it doesn't make any difference to me, at least, how many there are. It is our object to make public as many of these things as we can, but our time is limited and we have a lot of matters to take up, probably consuming all the time we have remaining, which is up to July 1. But this is a matter that ought to be taken up, and, as I said before, the District Attorney is the one who I believe should take it up.

With reference to the moral indictment, I am convinced that the power of the Governor has no right to investigate the police of the city. It can only investigate state departments; it is lim-

ited to that, I think. Investigations can be made by the grand jury, District Attorney before magistrates, by the Mayor through the Commissioner of Accounts, or can be made by the Public Service Commission by its own or special investigation, in which case they have power to appoint special investigators. There is no question about that. I am simply directing you to these agencies.

Mr. Brady.—Mr. Chairman, I thank you.

Mr. Moss.—I want to say, for the record, in giving these names to Mr. Brady and his associates representing labor, I think we are following the right policy, a policy which we ought to follow with any persons who ask if they are on the list. I don't think the list in general should be published for reasons that I have heretofore stated. There may be persons whose names are on that list who are innocent persons and unable to protect themselves against rumor and suspicion, and the publication of the list might do them grave injury. But if anybody comes along that doesn't mind that phase of it and wants to know whether he is on the list, I think it is quite proper for the Committee to give that person or that organization the information that is requested.

Senator Thompson.—Well, that is the only reason for withholding the list, in that it might adversely affect some one whose name is on the list. Therefore, when any one applies to us to know if their name is on the list, we give them that information. You can take the list and use it as you see fit.

Mr. Brady.—Doesn't that raise a very grave issue? On the list in existence in the Police Department there may be innocent people listed, as there probably are, and this list is turned over by one administration to another. All the police know that pertains to this matter is that this body has been under suspicion and their wires have been tapped on that account. Now, the indiscriminate tapping of wires, I think, has been carried entirely too far. It is an abuse, and some means, by immediate legislation or otherwise, ought to be adopted for stopping it. And that's the reason we desire the list, even if some innocent people are hurt, for it is best to remove the suspicion that is hanging over some of the people in the eyes of the police, and possibly of the public.

It is far better to do that than to have them continue in the hands of the Police Department just as finger prints in a rogues' gallery and other similar things with reference to men who have merely been indicted but never convicted. That is the thing that is getting under our skin, and that's the kind of thing that we object to. The unions are particularly proud of their records and not afraid to stand up for anything. We right our own wrongs and call them to the attention of the proper authorities when necessary, and we feel a great deal of indignation at the policies and practices of the Police Department in tapping our wires without letting us know, and also letting the private detective agencies run amuck the way they have. That's the reason we are demanding that the entire list, as well as the transcripts that have been collected over these wires, be made public. We not only want the list, but we want the basis for the suspicion and the conversation that was taken over the wire, so that we can verify whether that suspicion was correct or not.

Senator Thompson.—Well, it is perfectly obvious that they have to tap a lot of wires without even a suspicion.

Mr. Brady.—I might say, Mr. Chairman, in conclusion that this Committee here to-day, of which I am one, which came here to make these demands of you, represent in the City of New York close to 500,000 organized wage-earners. That is not our figure — that's the figure of the State Labor Department, which can be verified by the statistics which they publish as representing organized labor. Their figure is a couple of thousand short of organized wage-earners in the City of New York.

Mr. Moss.—There are on this list some ladies, Mr. Brady, whom I know by inquiry are excellent, good women, and they would be put in a very embarrassing position by a publication of that list. I have never been able to resist the silent appeal of women in distress. Some of them would be very greatly in distress if their names were printed, and I think that if we give to the representatives of the labor organizations the names that directly affect their interests, because they request those names, that we are doing all that we ought to do to-day — at any rate, until the Committee could take the matter under advisement.

Mr. Brady.— That just makes the crime against the Police Department all the greater if they are responsible for the tapping of the wires of ladies, and in my mind —

Mr. Moss.— That is a phase of the situation that we cannot handle.

Mr. Brady. — I think that everybody who is on that list ought to be asked to come before your Committee and asked if they know any reason why their wires should have been tapped by the Police Department. I will admit that I am giving your Committee a large job.

Mr. Moss.— Some of these fellows have been spoken to in executive session, and they would not like to have their names printed.

Mr. Brady.— Well, they can go as far as they like with the unions.

Mr. Moss.— I suspect that you are able to stand up and take care of yourselves.

Mr. Brady.— We have been doing that for a long time.

Mr. Moss.— But it is the other side that we have to think of.

Senator Thompson.— Then you come in, Mr. Brady, at 4:30.

#### Testimony of Mr. CEDARSTROM:

#### Examination by Mr. Frank B. Moss:

Q. Mr. Cedarstrom, there are a few matters that we didn't have time to close up the other day. You start right in, for I have lost track of them. A. I think I have testified on all of the transactions that have been referred to, and with your permission I would like to give a very brief summary.

Q. That's agreeable. A. The lease is for 999 years. The property is Stillwell Avenue — Avenue Y to a point north of Surf Avenue, Coney Island. The Nassau Electric to the New York Municipal Railway Corporation, proposal \$300,605, accepted \$236,000, reduced \$74,605, and other conditions that the agreement modified.

Purchase, from the Transit Development Company to New

York Municipal Railway Corporation, connection between Luthcran Cemetery Line and Myrtle Avenue Elevated Line property east of Fresh Pond Road, proposal \$126,533.02, accepted \$100,-198.42, reduced \$26,334.60.

Lease five years. Property, 37th to 39th Street — 2d to 3d Avenues. Repair Yard. South Brooklyn Railway Corporation to New York Municipal Railway Corporation. Proposal \$82,000 per annum total five years, \$410,000. Accepted \$58,500 total for five years \$292,500. Reduced \$117,500 for five years.

Property 2d Avenue and 38th Street, including water front. South Brooklyn Railway Corporation to New York Municipal Railway Corporation. Proposal, total for five years' lease approximately \$75,000, with the understanding that any improvements constructed by the New York Municipal Railway Corporation on the land, such as building, piers, docks, etc., to become the property of the South Brooklyn Railway Corporation. Proposal \$75,000 for five years' lease. Accepted \$60,500. Reduced about \$14,500, and in addition any improvement constructed by the New York Municipal Railway Corporation — the fair value thereof to be paid for at the expiration of the lease by the South Brooklyn Railway Corporation. Purchase — Brighton-by-the-Sea to the New York Municipal Railway Corporation. Elevated Railroad Easement, etc. Proposal, \$110,000. Accepted \$85,000. Reduced \$25,000.

Purchase, Transit Development Company to Public Service Commission, 38th Street cut — east and west of 8th Avenue. Proposal \$150,000 for an easement to avoid construction of a concrete wall and as proposed in city ownership the property would have no market or salvage value. Accepted \$150,000 and conveyed the fee simple, which I estimated at \$50,000.

A brief summary:

Stillwell Ave. . . . .	\$74,605.00
Fresh Pond Road . . . . .	26,334.60
Lease 2d Ave. to 3d Ave. — 37th St. to 39th St. ....	117,500.00
Lease 2d Ave. and 38th St. & waterfront. ....	14,500.00
Agreement Brighton-by-the-Sea . . . . .	25,000.00
38th St. cut — 8th Ave. ....	50,000.00

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\$307,939.60



The \$307,939.60 is the total reduction on the six parcels.

Q. Did you find out who was interested in Brighton-by-the Sea?

A. They have been spoken of as a real estate associated generally. There were the real estate associates and some guarantors there.

Q. Who were the guarantors? A. I don't know that they are interested in it.

Q. I shall read from the act of agreements. The liability of the guarantors shall be borne as follows: Forty-five per cent. by the realty associates; forty-five per cent. by the Mechanics Bank of Brooklyn; ten per cent. by August Belmont. This is a guarantee to the railroad companies of the full and complete performance by Brighton-by-the-Sea, incorporated, of the covenants and agreements of the contract.

Mr. Yeomans.— And an interest in the real estate was sold?

A. I don't know what interest they had in it, because I had nothing to do with that end of the deal at all.

Mr. Yeomans.— I understand they were interested in the real estate. A. The only way I was interested in that — I was asked by Judge McCall to go into it and analyze it and I did and declared it was a reasonable deal in my opinion and I took the guarantors into consideration then. The deal was guaranteed; otherwise we had nothing to do with it.

Mr. Yeomans.— Now, Mr. Cedarstrom, you have summarized a large number of deals there. I haven't seen them, but the ultimate result was satisfactory to you, wasn't it? A. Why to be very frank with you, I didn't know until I came here of the result of that Nassau right of way.

Mr. Yeomans.— But practically those results which were gotten when you got through with your negotiations — the amounts, etc. — were satisfactory to Commission? A. Well, I can hardly say that in every instance. I thought that they were liberal in some cases, and I thought —

Mr. Yeomans.— But generally they were satisfactory? A. I also thought that they may have had knowledge of facts which I didn't have, which, of course, I can well assume.

Mr. Yeomans.—They were generally satisfactory? A. Why, yes, generally you may say that.

Mr. Yeomans.—And most all of those instances which you have mentioned did involve matters other than real estate values having to do with railroad questions and engineering questions, etc.? A. Well —

Mr. Yeomans.—Each one did, didn't it — practically? A. Well, of course, so far as the engineering is concerned, I have taken the conclusion of our engineers and based my opinion on that.

Mr. Yeomans.—Didn't the fact that they did involve real estate problems, subway problems, etc., influence you? That is fair. A. Well, I don't think there are any elements there that I couldn't —

Mr. Yeomans.—Isn't it a fact? You have said that a dozen times. A. Well, they had to pass on certain technical matters and furnished me with that and I adopted in every instance their conclusion.

Mr. Yeomans.—I am not raising a question about that. When you started out, as for instance where you finally agreed on Fifty-eighth Avenue \$500 a year. Fifty-second Avenue, is that? A. Thirty-seventh and Thirty-ninth.

Mr. Yeomans.—You started the deals lower and our people started considerably higher, and when we got through you were both satisfied with the amounts, weren't you? A. Yes.

Mr. Yeomans.—And that was so with the others — practically? A. Not in every instance.

Mr. Yeomans.—Now, the Commission approved all those. did it not? A. Yes.

Mr. Yeomans.—Have you any criticism on the Commission? A. Absolutely not, because I don't know what entered in their minds.

Mr. Yeomans.—So that you have taken their items and shown what was originally asked by whoever was involved in disposing of the property? A. And the recommendation — these original

figures were recommended by the New York Municipal Railway Company as being reasonable.

Mr. Yeomans.— That's the purpose of showing what the negotiations were and what they found out? A. Yes.

Mr. Moss.— I am through with this gentleman now.

Mr. Yeomans.— Well, we have asked the Senator that these statements which involve all these real estate deals which have been furnished to the printer be put in evidence. I thought that Mr. Moss might want to examine those. If there is anything in these that you want us to answer, we will be very glad to do so. They are all parts of these transactions. You might want to ask Mr. Cedarstrom about them. We have presented them to the Committee at its request. They involve a real estate transaction. I mean they involve all the real estate transactions.

Mr. Moss.— We don't request anything.

Mr. Yeomans.— I say the Committee requested, Mr. Moss, and we furnished them to the Committee's representative. I am not saying you requested them.

Mr. Moss.— We are not in position of requesting anything but whatever you think we should have.

Mr. Yeomans.— I am referring to those statements of Pearley Morse.

Mr. Moss.— Oh, yes.

Senator Thompson.— Mr. Morse will be up here. He just telephoned.

Mr. Yeomans.— Mr. Morse asked for them and they were furnished to the Committee.

Mr. Moss.— Of course, if we go into that matter and Mr. Shuster brings forward anything, we will let you know.

Senator Thompson.— There is one thing that I want to say. I read some testimony and I want to correct the impression that was given with reference to that land that I think is at Tenth Street; is that where that station is?

Mr. Cedarstrom.— Tenth Avenue.

Senator Thompson.— Where some question was involved in building a wall.

Mr. Cedarstrom.— Well, that's the Thirty-eighth Street cut. That's the \$150,000 deal.

Senator Thompson.— Yes. It didn't appear before the Public Service Commission in the record that was had in that case that the demand was made quite on the proposition that the B. R. T. should be awarded a portion of the savings that the city made by reason of non-construction of the wall. It didn't appear that way in the evidence. I was through it over Sunday. But it did appear that the land wasn't worth over \$50,000; that it had cost the railroad company more than that, and they demanded more than that to turn it over to the city and used the argument to convince the Public Service Commission that they ought to take it and that the city would save a couple of hundred thousand dollars in the construction by taking this real estate. In other words, they could award \$150,000 to the railroad land and still make a saving over the condition that they would be in if they didn't have the land at all. That was about the way they put it up. And the fault of it seemed to lay with the generosity of the Public Service Commission. That's about as far as the matter needs criticism. So that as far as I can criticize is in that you took the attitude that you were divided with reference to dividing the property with the city.

Mr. Yeomans.— What really happened was that the traction company went out and bought up this real estate, knowing that they were going to need it in this construction, and they had this real estate there and they paid \$24 000 for it. Then the engineers of the Commission took up the question of this saving, of changing the plan, etc., and that was taken up with us, and then it was suggested that they take what they needed of this, and by agreement they finally agreed on \$150,000, but the result of this was that it left the transit development with a lot of destroyed real estate there that they don't know what they will get for it or what to do with it. Further than that—

Senator Thompson.— They will get the city to start out and build new lines.

Mr. Yeomans.— Further than that, there were two condemnation proceedings. Mr. Woody conducted one and the city the other, and in each of them the awards were just about on the basis of the awards that had been made on other property.

Senator Thompson.— Well, I wanted to correct that impression that I gave that you were there.

Mr. Smith.— Mr. Yeomans' inquiry as to whether or not you were ultimately satisfied with the results produced brings this inquiry. As I understand, you performed your official duty and have no official criticism of your superiors?

Mr. Cedarstrom.— Absolutely none!

Mr. Moss.— Well, that's all there is of it.

Mr. Smith.— Mr. Chairman, I will ask you to allow us to place upon the record an interesting letter from the Comptroller in answer to a request of ours to be furnished with the cost and the estimated cost of the construction of the subways to date.

### "CITY OF NEW YORK.

#### " DEPARTMENT OF FINANCE.

" Frank Moss, Esq.

" Counsel to Legislative Investigating Committee.

" Dear Sir.—

#### " *Re Contract No. 3.*

" The original estimates by the Public Service Commission for the construction of the rapid transit railroad to be operated by the Interborough Rapid Transit Company, and upon which the appropriation of \$28,200,000 authorized by the Board of Estimate and Apportionment on March 18, 1913, was based, consisted of the following amounts:

Construction (Contracts as-	
sumed by City prior to	
March 18, 1913.) . . . . .	\$35,135,637.84

Additional construction ....	33,364,362.10	
Extras .....	4,808,964.75	
	<hr/>	\$103,808,964.75
Real Estate and Terminals .....		7,500,000.00
City's Interest .....	2,671,942.00	
Company's .....	4,964,731.00	
	<hr/>	7,636,673.09
Company's Debt Discount (3 per cent. of \$58,000,000) .....		1,740,000.00
Company's Administration and Engineering Expenses .....		650,000.00
		<hr/>
		121,335,637.84

"This total was to be contributed as follows:

City's contribution furnished as per construction con- tracts authorized prior to March 18, 1913 .....	\$35,135,637.84
Amount appropriated and authorized March 18, 1913 .....	28,200,000.00
Interborough contribution to construction .....	58,000,000.00
	<hr/>
	121,335,637.84

"In addition to the foregoing the City had paid out prior to March 13, 1913, the sum of \$267,250.39 for real estate acquired on the line of the Lexington Avenue route, which will be capitalized as a part of the City's contribution in the building of the railroads.

"The actual liabilities incurred for construction, as measured by the construction contracts let up to May 1, 1910, together with the interest payments, etc., are as follows:

*Construction (a)*

Contracts assumed by City ..	\$52,781,741.37	
Contracts assumed in In- terborough .....	37,608,564.65	
Steinway Tunnel, assigned by Interborough .....	3,000,000.00	
	<hr/>	(a) 93,390,306.02

<sup>5</sup> <i>Real Estate and Easements (b)</i>	
Paid by City to May 1st. ....	1,131,992.84
Paid by Interborough .....	1,460,843.39
Additional payable by City	
— est'd .....	4,745,407.74
	<hr/>
	7,338,243.97
 <i>Interest on Bonds (c)</i>	
Paid to May 1st. ....	3,325,106.09
Paid by Interborough to City	
for Interest on City Bonds	202,003.61
Additional Interest from May 1	
to Dec. 31, 1916— est. ....	850,000.00
	<hr/>
	4,377,109.70
	<hr/>
	\$105,105,659.69
 <i>Additional Known Charges Against Construction:</i>	
Company's Debt Discount .....	1,740,000.00
Company's Administration and Engineering	
Costs as included in original estimates ....	650,000.00
Company's Interest as included in original estimates .....	(d) 4,964,731.09
	<hr/>
	\$112,460,390.78

“ The foregoing figures (b) dealing with the payments already made and the estimated additional costs for real estate easements do not include the costs for terminals and yards. Repeated requests have been made by this office to the Public Service Commission to be furnished with estimates of probable additional costs for real estate but we are still awaiting such estimates and therefore cannot give any statement of what the probable total costs of real estate and easements will finally amount to.

“ The additional interest costs upon City moneys invested under Contract No. 3 (c) will be entirely dependent upon the additional construction cost and the ultimate costs for real estate and easements; also upon the time when construction of the railroad will be completed and operation will begin. Estimates have been made at different times by the Public

Service Commission as to what the probable total interest costs of Interborough money will be, and all of these indicate that the amount (d) included in the original estimate will be considerably exceeded. The amount of Interborough interest which will finally be capitalized and charged as a part of the fifty-eight millions of dollars to be contributed by said Company will probably be several million dollars in excess of the original estimates."

Mr. Wm. Bullock.— This interest account is largely explained by two things. Prior to the time March 18, 1913, when those contracts were signed by the parties the city had paid back — way back to 1907 interest on its construction expenditures, represented by the Fourth Avenue Subway and the Center Street loop, which were lying idle, very large sums and interest.

After contracts were signed along in 1914, they estimated all the interest that had been paid out raised by taxation and paid, not capitalized, prior to the time the contracts were signed, and they figured up a pot of about \$3,000,000, and they did the same on the Interborough, and the aggregate sum was over \$4,500,000. And in 1914 tax budget they arranged to have the general fund for deduction of taxation receive the proceeds of corporate stock to be issued to refund this \$4,500,000 of interest in the 1914 tax budget and they then issued corporate stock and charged it on account of the \$60,000,000, so there was no estimate of \$60,000,000 to pay back the interest that had been paid of taxation prior to the time the contracts were signed.

Under the contracts and under the estimates from which the \$60,000,000 was derived, there was no provision for capitalizing the deficits on the Center Street loop. Of course, it was known to be very heavy and there was interest, because there was a \$10,000,000 sum — a \$10,000,000 investment which produced no revenue, practically none; it is a terminal. It is known that there are some very heavy deficits on the Fourth Avenue subway, because there is a \$10,000,000 expenditure through a dead district, and —

Mr. Moss.— That's the best expression I have heard yet for that situation.

Mr. Bullock.— It was anticipated that those deficits would be met out of taxing currently, so that the burden would be dis-



tributed generally on the city to which any value that the operation of these lines might be would accrue, but instead of that they kept on issuing corporate stock for those deficits, and have largely increased the city's interest account on that. I should say that the two items together would aggregate pretty close to \$5,000,000 at the present time.

Mr. Yeomans.—By the power of determination they got that taken up and they get that earning back.

Mr. Bullock.—Now, further than that, the contracts or the estimates of the engineers on which the \$60,000,000 were predicated did not assume that the expenses of Public Service Commission for the supervision, engineering, etc., which were bound to run very high on the engineering side during the construction period and then decrease as constructions were completed and they could let out their engineering forces, \$60,000,000 didn't contemplate that that would be capitalized but would also be paid out of taxation from time to time. But the Public Service Commission's supervisor for 1914, which is as far as they have got their figures checked up, show that the expenses were over that. Corporate stock has been issued, and those items in the aggregate are very largely increased.

Mr. Moss.—Do you think it was good business to run those two lines around in Coney Island?

Mr. Bullock.—I don't think so. I don't want to express an opinion, Mr. Moss. I do personally think it was very good business. The city was going to spend on a single extension of the Fourth Avenue subway from 86th Street down a great deal more than the Coney Island and South Brooklyn has cost and we showed them how they could get about three or four times the amount of transportation for less cost. That's ordinarily considered good business.

Senator Thompson.—Well, you would make it easier for a man to go where he spends his money than to go where he earns his money? I don't suppose he earns any down at Coney Island.

Mr. Bullock.—There was an increasing residential develop-

ment down that way. Coney Island trains run in both directions, you know.

Mr. Smith continues reading, as follows:

“This office has also recently, and during the past six months, repeatedly requested the Public Service Commission to furnish a statement showing the sections of the railroad to be operated under Contract No. 3 for which construction contracts have not yet been let, together with the estimates of the additional costs thereof. We are still awaiting this data and consequently cannot furnish you with anything like a complete statement of what the total cost of the railroad to be constructed under Contract No. 3 will ultimately aggregate. If, however, the *original estimates of construction costs* by the Public Service Commission engineers of \$103,808,964.75, or another estimate of \$104,683,000 is not exceeded, this would mean that there is still apparently from \$10,418,658 to \$11,293,000 additional to be provided for construction per se, based on (a), which reflects the total costs of construction contracts let prior to May 1, 1916. *Resume:* It may therefore be noted from the foregoing that the original estimate of \$7,500,000 for real estate and terminals will in all likelihood fall short of the needed requirements by several million dollars, because, as stated herein, the payments already made for real estate and the known cost of property already acquired in condemnation proceedings will aggregate over \$7,338,000 without including one dollar for terminals and yards.

“The interest already paid on the City’s rapid transit bonded debt, together with the amount which will be required for this purpose during the remainder of this year, aggregates fully \$1,700,000 more than the original estimates, as may be noted by reference to the original estimate appearing on page 1 and to the figures of interest payments on page 2. As previously stated herein, the additional interest cost upon the city’s investments under Contract No. 3 will be entirely dependent upon the additional construction cost and the No. 3 will be entirely dependent upon the additional construction cost and the ultimate additional cost for real estate and easements, and also upon the time when construction of the railroad will be completed and operation will begin.

"In whatever amount the interest costs upon Interborough money will exceed the \$4,964,000 included in the original estimate of the cost of the railroad, a corresponding sum will require to be provided by the City towards *construction per se*. because as the amount of interest chargeable against the Interborough's \$58,000,000 of *total* contribution is increased beyond the original estimate for interest, the amount available from said total contribution for *construction* is reduced in an exactly corresponding amount.

"This also holds good with respect to the amount which the Interborough may be allowed to capitalize as administration and engineering expenses. As may be noted, the original estimate included \$650,000 for this purpose. Should the amount finally decided upon prove to be less than the estimate, such would be a salvage towards construction, and should the final amount exceed the estimate the amount available from the Interborough money for construction would be correspondingly decreased, and the City's contribution would be correspondingly increased.

"As already stated, we are still awaiting information from the Public Service Commission with respect to whether the original estimate for *construction* will be sufficient to cover all the actual costs of such. A communication to-day says that they —

"\* \* \* have practically all the needed data at hand, and we hope to be in a position to go over these within the next few days.'

"The original estimate by the Public Service Commission for the construction of the rapid transit railroads to be operated by the Brooklyn Rapid Transit Company or the newly created corporation for said purposes, the New York Municipal Railway Corporation, and upon which the appropriation of \$60,000,000 authorized by the Board of Estimate and Apportionment on March 16, 1913, was based, consisted of the following amounts:

Construction (Contracts entered  
into by the City for the  
Brooklyn-Centre Street Loop;

the Fourth Avenue Subway, etc., prior to March 18, 1913) . . . . .	\$37,110,110.26	
Additional Construction — esti- mated . . . . .	58,019,889.74	
Extras — estimated . . . . .	3,571,960.93	
	<hr/>	\$98,701,960.83
Real Estate and Terminals...		6,000,000.00
City's Interest . . . . .	\$7,794,610.00	
Company's Interest . . . . .	1,100,430.17	
	<hr/>	\$3,895,030.00
Company's Debt Discount (3% of \$13,300,000) . . . . .		405,000.00
		<hr/>
		\$114,001,991.00
“ The foregoing total was to be contributed as follows:		
City's contribution as per construction contracts entered into prior to March 18, 1913, plus ap- propriations for real estate. . . . .	\$40,501,991.00	
Amount appropriated and authorized by City, March 18, 1913. . . . .	60,000,000.00	
	<hr/>	\$100,501,991.00
New York Municipal Railway Contribution....	\$13,500,000.00	
	<hr/>	\$114,001,991.00

“ In addition to the \$13,500,000 which the Company is to contribute towards the cost of construction, it also has to provide the cost of constructing a physical connection with the other subway to be operated by the New York Municipal Railway Corporation. There has been disbursed to May 1st on account of said physical connection \$589,115.75, all of which moneys have been provided by the Lessee Company.

“ The actual liabilities incurred for *construction*, as measured by the construction contracts awarded up to May 1, 1916, together with the payments of interest on the City's rapid transit debt; payments and liabilities for real estate, easements, etc., are as follows:

*Construction (a):*

Contracts assumed by City....	\$84,238,829.68	
Contracts assumed by New York Municipal Corporation — est'd . . . . .	2,585,350.97	
South Brooklyn Easement, as- signed to City by Lessee Company . . . . .	1,000,000.00	
	<hr/>	\$87,824,180.65
Sundry Payments by N. Y. Mun. Ry. Corp. on account of Construction, etc., as stated by Public Service Engineers...		133,140.63
		<hr/>

\$87,957,321.38

*Real Estate and Easements (b):*

Paid by City to May 1st. ....	\$5,341,880.74	
Paid by N. Y. Mun. Ry. Corp.	4,422,035.69	
Additional payable by City — est'd . . . . .	1,410,665.08	
	<hr/>	\$11,174,582.51

*Interest on City Rapid Tran-  
sit Bonds (c):*

Paid by City to May 1st . . . .	\$7,713,496.91	
Paid by N. Y. Mun. Ry. Corp. for Int. to City on City Bonds ..	660,472.92	
Add'l Int. from May 1 to Dec. 31, 1916, est'd	1,650,000.00	
	<hr/>	\$10,023,969.23

Interest on Lessee Company's debt as reported by P. S. C. prior to Sept. 30, 1914. .... (d)	923,842.02	
	<hr/>	\$10,947,811.25

<i>For Engineering, Superintendence and Legal Expenditures,</i> as reported by P. S. C. prior to Sept. 30, 1914 (a).....	45,511.96
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<i>Debt Discount by Company</i> prior to Sept. 30, 1914.....	172,108.70
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\$110,297,335.70

*Additional Known Charges  
against Construction:*

Company's Debt Discount....	\$405,000.00
Less charged above.....	172,102.70

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\$232,981.30

Company's Administration and Engineering Costs. (No pro- vision made for this in ori- ginal estimates. (d) Com- pany's Interest as included in original estimates . . . . .	\$1,100,420.17 (d)
Less Amount charged above..	923,842.02
Balance of Interest as included in original estimates . . . . .	176,578.15

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\$110,706,805.15

“ It may be noted that the payments already made and the liabilities incurred for real estate and easements already acquired aggregate (b) \$5,174,588.51 in excess of the amount **therefor which was included in the original estimates submitted to the Board of Estimate by the Public Service Commission, and upon which the Board predicated the additional appropriation of City moneys of \$80,000,000 on March 13, 1913, for the purpose of carrying out the City's obligations** under Contract No. 4. The figures already established of \$11,174,582.51 for real estate and easements does not include whatever additional costs there may be for terminals and yards. As in the case of Contract No. 3, repeated requests made by this office upon the Public Service Commission to be furnished with estimates of probable additional costs for real

estate have so far borne no fruit. Therefore, I cannot give any statement of what the probable total costs of real estate and easements chargeable against Contract No. 4 will finally amount to.

“The original estimate of the total amount of the City’s interest which would be capitalized under Contract No. 4 was \$7,794,610. The interest, as may be noted (c), which has already been paid on City rapid transit bonds issued for the purposes of Contract No. 4, together with the additional interest which will be payable during the remainder of this year, will aggregate upwards of \$10,000,000, or over \$2,229,000 in excess of the original estimates. A certain amount of this additional interest has been due to deficits in the operation of the Centre Street Loop Line and the Fourth Avenue Subway, the first portion of which was operated beginning in August, 1914, but which has not yet earned sufficient money to meet the Company’s charges or to provide any balance with which to meet the City’s interest charges. The additional and therefore total interest costs upon City moneys invested under Contract No. 4 will be dependent upon the ultimate additional costs for real estate and easements, upon the additional construction costs, and also upon the time when the revenues from the operation of the railroad will be sufficient to provide all of the Company’s carrying charges and meet the City’s annual interest costs.

“The amount of the New York Municipal Railway Corporation’s interest on debt which will finally be capitalized, and which therefore is a part of the \$13,500,000 to be contributed by said Company, will probably be very much in excess of the original estimates. It may be noted that up to September 30, 1914, the Company claimed interest to be capitalized of \$923,842.02, which left a balance of only \$176,578.15 of the original estimates to meet all of the additional costs of the Company accruing up to the beginning of subway operation by it. This balance will be wholly inadequate to meet the Company’s interest requirements. It has submitted estimates upon which it claims that the interest to be capitalized will aggregate 24 per cent of the \$13,500,-

000 which it is to contribute; in other words, that the interest to be capitalized will aggregate \$3,240,000.

" This office has repeatedly requested the Public Service Commission to furnish a statement of the probable additional costs over and above the original estimates which will be required to carry out and complete the railroads to be operated under Contract No. 4. These requests have included a statement to describe the sections of the railroad for which construction contracts have not yet been let, together with estimates of the probable construction costs thereof. But, as in the case of Contract No. 3, we are still awaiting this data and consequently cannot furnish you with anything like a complete statement of what the total cost of these roads will ultimately aggregate.

" The original estimates of construction by the Public Service Commission engineers, upon which the appropriation of March 18, 1913, was based, aggregated \$98,701,960.83, while a higher estimate of said engineers is said to have aggregated \$99,675,996. If the later and higher estimate is not exceeded it will require at least \$11,618,675 additional to complete the construction contracts, and practically all of this money the City will have to provide in addition to the \$60,000,000 appropriated on March 18, 1913. There will also be an additional \$4,000,000 (the estimated cost of constructing a tunnel under the East River at 60th Street to Queens) to be provided by the City, which was not included in the estimates of March 18, 1913.

" *Resume:* It may therefore be noted from the foregoing that the original estimate of \$6,000,000 for real estate and the terminals has already been exceeded by over \$5,000,000, and that the actual expenditures and liabilities incurred do not include any costs for yards and terminals.

" The interest already paid on the City's rapid transit bonded debt, together with the amount which will be required for this purpose during the remainder of this year, aggregates upwards of \$2,229,000 over and above the original estimate for such, and, as already indicated herein, it is exceedingly difficult to estimate what the additional interest costs to be met by the City may be before there will be revenue



sufficient from the operation of the railroads under Contract No. 4 to stop the necessity of the city providing for interest.

"In whatever amount the interest rests upon the Lessees Company's money will exceed the original estimate of \$1,100,430.17 included in the original estimate of the cost of the railroad, a corresponding sum will require to be provided by the City towards construction *per se*. The Company is limited to a total contribution of \$13,500,000, and to whatever extent the several elements therein are exceeded the amount available for construction *per se* is correspondingly reduced and the City's liability increased in exactly a corresponding amount.

"There was no provision whatever made in the original estimate for engineering, superintendence or legal expenditures by the Company which would be chargeable against its contribution of \$13,500,000, but nevertheless, up to September 30, 1914, the Public Service Commission had allowed a sum for such purposes of \$45,511.93. Whatever additional amount the Public Service Commission may allow to the Lessee Company as administration, engineering and legal expenses to be capitalized as a part of the \$13,500,000 contribution of the Company towards construction, a corresponding sum will require to be provided by the City.

*"Administrative and Engineering Expenses by Public Service Commission:* In presenting to the Board of Estimate and Apportionment the estimates of \$28,200,000 respectively which they requested should be appropriated by the Board for the purpose of providing the City's contributions under Contract No. 4 and Contract No. 3, the Public Service Commission stated that —

"There are not included in the above amount the expenses of the Commission for administration, superintendence, legal expenses and engineering.' This will indicate the reason why no question has been made in the preceding statements of such expenses to be capitalized as a part of the construction costs of these rapid transit railroads.

"In accordance with a statement furnished to the Board of Estimate and Apportionment corporate stock in the sum

of \$2,023,000 was authorized October 31, 1914, to be issued for the purpose of reimbursing the City's General Fund for the cost of engineering, superintendence, legal expenses and administration by the Public Service Commission from March 18, 1913, to December 31, 1914, chargeable against and to be capitalized as a part of the cost of construction of the railroads to be operated under Contract No. 3; and on the same day \$1,520,000 of corporate stock was authorized to be issued to reimburse the City's General Fund for similar expenditures chargeable against Contract No. 4 for the same period of time, viz., from March 18, 1913, to December 31, 1914. The costs similarly chargeable against Contract No. 3 and Contract No. 4 for the year 1915 were provided by the City from special revenue bonds aggregating altogether upwards of \$3,000,000. This expenditure and a similar expenditure for the year 1916, as properly apportioned, will be capitalized as a part of the construction costs under these separate rapid transit contracts.

*“ Conclusion:* The foregoing statements include, under the significant subdivisions of Construction: Real Estate and Easements; Interest on Debt; Debt Discount; Administration and Engineering Costs, etc., all of the costs for subway construction under Contracts No. 3 and No. 4 as established up to May 1, 1916, together with estimates of such additional costs for the remainder of this year as are within the knowledge of the Department of Finance.

*“* The first purpose of this communication has been to meet your request for a statement of the actual costs incurred in the construction of these railroads; in the acquirement of real estate and the payment of interest up to May 1, 1910, and also to give you whatever additional information this Department can with respect to the probable additional costs or excess costs over and above the original estimates. Until the data referred to herein has been obtained from the Public Service Commission with respect to the probable additional costs for real estate and easements, for construction, etc., the statement which you have requested as to the probable total costs to the City, over and above the original estimates of

March 18, 1913, of the subways now in course of construction cannot be given.

“ Yours truly,  
 “ (Signed) WM. A. PRENDERGAST,  
 “ Comptroller.”

Mr. Moss.— It seems to me that this increased cost of \$40,000,-000 eats up most of the increased taxable value of the property.

Senator Thompson.— They run as many trains over there as they do here, don't they?

Mr. Yeomans.— I guess they run more.

Senator Thompson.— I say that because they had to let an expensive percentage contract over here in order to keep trains running while they were third-tracking.

Mr. Yeomans.— I don't know whether that had anything to do with our contract or not. As a matter of fact, we did have the trains going.

You see, Senator, we were third-tracking. There were two tracks. You will remember the tracks were on the sidewalk and they destroyed them, but we were putting in a third track.

Senator Thompson.— Well, you were entirely reconstructing the whole structure in some cases over there?

Mr. Yeomans.— Wherever it was demanded.

Senator Thompson.— Well, I guess it isn't worth arguing over.

The theory, I suppose, as to who was to blame for this excess of cost over estimate must be that the city, the Public Service Commission —

Mr. Yeomans.— All I can say is that we didn't do any of the city's construction.

Senator Thompson.— Well, we will go into executive session now. Before that, however, Mr. Brady wants to read an additional statement.

Mr. Brady.— “ We agree with you, Mr. Chairman, that the in-

nocent parties to this controversy should be protected. The unions throughout the state intend to protect them, if they can.

"It is not mere curiosity that prompts us to ask for the publication of the entire list, having in mind the intent of Mr. Moss and yourself in keeping the list secret. We cannot agree with you that this act can serve the best purpose.

"We think the people realize this information must come from you and your counsel. The people know when crime has been committed to society, and the one thing an innocent person wants to do is to declare that he is innocent. Men want to know if they are included as police suspects; if there is a good and sufficient reason to tap their wires and listen to all their private conversations in the hope that the criminal might by some chance talk over their wires.

"If you do not think it is best to publish the names on the list, make known the telephone numbers. Those who are included in the list will recognize their own numbers, and if they are innocent, they can protect themselves in a lawful manner. Those who are anxious to know if they are included in the list will find out in that way, without any one knowing they were desirous of finding this out, and nobody will have suffered.

"We are willing to agree that in the case of criminals it is all right to keep those particular wires under surveillance. We, however, most respectfully demand of you and your counsel to make public these numbers.

"You announced this afternoon, if I understand you correctly, that there were several ladies on the list and that, upon investigation, you felt that it would be an injustice to make their names known. Would it not be more of an injustice to them to have their names handed down to succeeding police administrations as criminals? It is for us to assume they are innocent, and with this in view, it is, we believe, up to us to know by what right they are included among the criminals in the police records."

Senator Thompson.— Well, we will take that up in executive session. If there is any statement to be made, it can be made then. In the executive session you can be present with all your colleagues, and such here as represent city officers and such here as represent newspapers, on the condition that you do not print anything that occurs.

Mr. Brady.— May I make this official request of your Committee, that the manuscript of the record of this afternoon including your statement in answer to our request be given to us?

Senator Thompson.—(To Stenographer.) Deliver a copy of the transcript which includes the matter Mr. Brady is interested in to him.

Those who do not represent any city officers will please leave the room, so we may go into executive session.

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### EXECUTIVE SESSION.

Senator Thompson.— We have given you the names of the unions that are on the list of those wires that have been tapped. You may make such use of that as you prefer — publish it, if you like; do what you like — that is up to you, you and your friends. I assume you won't do it without getting in touch with the unions to whom it refers and taking such course in reference to that information as you deem best.

Now, Mr. Moss, I assume you wanted to find out from him whether or not there are any other names on the list of the character you suggest.

Mr. Moss.— I have written a little memorandum on the bottom of that.

Mr. Brady.— Yes.

Mr. Moss.— There is only one defective agency on the whole list and that was stated to be in connection with strike matters, and so I gave you that. There are no owners' or employers' organizations on the list at all.

Mr. Brady.— That in itself demonstrates according to the list that you received that it was an exceedingly one-sided investigation — that the surveillance was one-sided, I mean. The employers of the strike-breaking agencies were not under investigation of the Police Department, according to this list.

Mr. Moss.— Well, the list speaks for itself, and I have gone

over very carefully and I think I have given you everything that would be on either side.

Senator Thompson.—Your assumption is that in case of the assumption of corruption by the police on which they base the right to tap a wire, that they assume that the labor people were corrupted and that the employers and such as they were working in connection were not. In other words, they didn't place any surveillance on that — didn't look for crime on that side as they did on your side?

Mr. Brady.—That was decidedly unfair. May I ask what city officers are present?

Mr. Moss.—Commissioner of Accounts, Corporation Counsel.

Mr. Brady.—May I ask them, Senator Thompson, if they have any objection to this list being made public?

Senator Thompson.—Not at all; go to it. You are here to work out anything you have.

Mr. Brady.—Do I hear any regret on the request?

Mr. Stover.—We understood that this list wasn't going to be made public.

Mr. Smith.—If you want to assume that there was no cause for the tapping of the wire, is there any reason why the name of a person should be passed around throughout the country?

Mr. Stover.—I understand that on this list there are names of persons who are not suspected of any crime at all.

Senator Thompson.—Well, that's the truth; that's one of the things about it. I have in mind the proprietor of a restaurant. They have a little pay station line, and it is under surveillance because they wanted to locate a criminal that they expected would use that telephone because he lived in the neighborhood and came and used that pay station. Now, absolutely, there is no question but that that restaurant is a good reputable place of business. Now, if that statement is published —

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Mr. Brady.— In trying to catch one criminal, they might have listened in on fifty or one hundred and fifty conversations.

Senator Thompson.— Probably did. That's wrong.

Mr. Brady.— In your opinion, would they be justified in listening in on 300 conversations to try to catch one person?

Senator Thompson.— I am frank to say that I don't believe this course adopted by the police here is justified at all. I don't think it is justified at all. If I had the power, I would stop it now.

Mr. James.— I can't see where there would be any harm to the proprietor of a place of business who had a pay station in his place of business in publishing the number of the pay station. I can't see that you are going to injure that man. But it certainly is a serious proposition. Supposing an attorney had a client and he went into the booth and telephoned him. He might say something over that 'phone that would be bad for his client if somebody else heard it. What right has the Police Department to do that?

Senator Thompson.— You might get a man who wants to know the market situation. It might be some information that affects very vitally the value of some property. There are all those things to be considered. Of course, it is wrong, there isn't any doubt about it.

Mr. James.— What harm would it do to publish the numbers in that list?

Mr. Stover.— All you have to do is to follow up the information you get in that way, and they will give you the address.

Mr. Smith.— What is the benefit you get from these abstract numbers in which you are not interested?

Senator Thompson.— That is what I was getting at — what benefit do you get as long as you cover the situation, as far as it affects you?

Mr. Moss.— The vast majority of these are hang-outs and places where thieves stay from time to time.

Mr. James.— The very fact that the police are permitted to tap wires is a danger to every citizen. They have tapped wires wherever they have seen fit to tap them, even in a political campaign, and it is a serious thing.

Let us have the data on the wires that were tapped, and we will go to the District Attorney.

Have you a list of the transcripts of the conversations that went over these wires?

Mr. Moss.— This may seem strange, but it's the funny part — it's the very point of the Potter case. That is what has made the Potter people so mad, that the sworn method of destroying these statements was not carried out. In the Potter case they complained that their statements were kept for a particular reason. Of course, we can only go upon what the statements to us have been in the sworn testimony. As far as we have gone, the custom is to destroy these things.

Mr. Stover.— I don't see what use it would be to you to get the entire list as long as you have the list of the names of the persons directly connected with your business.

Mr. Brady.— If we get the entire list we will also get others who are indirectly connected, and that is what we want to get at.

Mr. Stover.— Mr. Moss knows this list thoroughly, and he has given you all the names he says of persons who seem to be interested.

Mr. Tarbox.— I don't see how anybody is interested in this list.

Mr. Moss.— Well, you should remember what I said a few minutes ago — i. e., that any person who has ever come here and asked if his name was on the list has been told about it. We felt that it was our duty to tell him that.

Mr. Tarbox.— But you don't tell him whether anybody else's name is on there.

Mr. Moss.— He has as much right to it in the case of somebody else as he has in the case of his own. I wouldn't care what the city authorities, or the police commissioners, or anybody else said, when the labor unions come here and say: "Are we tapped?" I



say: "I will tell you right off," and anybody that relates to your labor union I will give you, and the whole city force can go and do what they like about it, but when it comes to giving you somebody else's, it raises the questions that we certainly ought to think about.

Mr. James.—What is the use, Mr. Chairman, in an investigation of this matter unless you intend to clarify the error by letting the public know what has been done and who the injury has been done to?

Senator Thompson.—Wouldn't you feel that if we turn the list over to the District Attorney and have you take it up with him, that that would be all right?

Mr. James.—Well, whatever in your judgment is right; we are not here to prolong the agony.

Mr. Brady.—If you feel that your Committee cannot do it, we, of course, are going to do the next best thing, and that is go to the District Attorney. We will have to go there if your Committee doesn't help us.

Mr. Moss.—As far as your own wires are concerned, we haven't waited for the District Attorney?

Mr. Brady.—That's true.

Senator Thompson.—Don't you think that would be the fair and just thing to do—for us to turn a copy over to the District Attorney and have you take it up with him?

Mr. Brady.—I am sorry to disagree with you. I feel that there has been so much talk and publicity about this wire tapping; so many people under suspicion who have no right to be; so many wires tapped without any right and so many wrongs committed by the police listening in on conversations, that the people ought to know about this matter so that they can take immediate steps.

Mr. Moss.—You must bear in mind that this would not give anybody the assurance that his wire was not tapped, because when a wire is not contained in a conductor all the where, where it doesn't have to be bridled in the premises, it may be tapped on the

outside, and this list of taps would be no assurance to people that their wires were not tapped. This is simply an official telephone company's list — a list of the requests that have been made by the Police Department to bridge wires on the premises of the telephone company.

Senator Thompson.— It is only in case of wires that run in cables or conduits?

Mr. Moss.— This is only about 350 names in eighteen months. But, of course, there is no secret at all; it is entirely public that wires have been tapped without information to the telephone company. How many, I don't know. What the policemen have done, they have said was done in pursuit of their duty.

Mr. Brady.— They never consult at all with any superior or any outside of the department at least as to the advisability of tapping.

Mr. Moss.— Don't get too far away from what I am saying. I am only saying that the publication of the list would not be an assurance to anybody that his wire had not been listened in on.

Mr. Brady.— But we do find this, that the Police Department has gone ahead in an indiscriminate way tapping wires as they saw fit without consulting with any other person outside the department or in the department itself as to whether it was advisable to tap certain wires or not. In other words, they have listened in on all kinds of conversations both private and otherwise without going into consultation. I have in mind the District Attorney, who, after all, is the prosecuting officer of the county, and it is within his scope to find out whether a crime has been committed and bring about a conviction. He, nor any city magistrate nor any city judge of any calibre at all has been consulted by the police department in their desire to tap wires. Is that correct?

Mr. Moss.— Yes. My own action is that no wire should be tapped any more than a man's house should be searched without a search warrant. You ought not to listen to his wire without a search warrant, and when people go into the pay station and close the doors so that people out in the room won't hear and then somebody is listening in on the wire in the pay station, it is funny.

Senator Thompson.— Well, I am frank to say that now that it is brought up that, politically at least, I had some prejudice against labor unions. I have been told that every time there is a strike, the unions are responsible for it, and strikes produce crime. But I am also equally candid in the statement that since I have been through this investigation, I have seen fit to make up my mind that there are two sides to these things, and I am somewhat impressed with the fact that there has been a great deal of suffering on account of frame-ups and a great deal of suffering on account of lack of information of the condition of things. I feel all this very keenly, and I want to do what is just by the people you represent, and I am sure counsel does.

From Audience.— I am compelled, if you will allow me the privilege of taking exception to what you say, that the vileness and crime was due to strikes. It isn't on the part —

Senator Thompson.— I didn't say that — don't misunderstand me — I said I have been brought up in an atmosphere before I entered the investigation where that was somewhat the state of my mind. From the information I got from what I read, from what was published I made these deductions. I live in the country, you know, and we have been educated to think that whenever there is a strike, it is criminal, and that crime was committed by the labor unions. That is the way I got it into my system until we investigated this matter. Now I have concluded that there are two sides to all these things. The unions, I think, have been subjected to a great deal of criticism on account of the public not having the entire information on the subject.

Mr. Moss.— The Senator is converted to your position.

Mr. Brady.— I remember lots of interviews which I had with the Senator on labor legislation.

Mr. James.— I was going to mention Lawrence and a lot of other places where they operated —

Senator Thompson.— I haven't changed my mind on the subject. I know a great many of the laboring people in my community and always have been friendly with them and still am friendly with them. It isn't on account of any change.

Mr. Brady.— You have at least discovered this, Senator, that in New York — in these matters, there is just one side looked after by the Police Department.

Senator Thompson.— There is such a thing in New York as a frame-up and it is used.

Mr. Moss.— Mr. Brady, I am going to tell you a little piece of experience. I know just how this thing works. I am in perfect sympathy with you. I was President of the Police Board once, and we had a strike over there on the East Side among just the kind of people whose wires have been interfered with. There was an Irish police captain there and I had a lot of Irish policemen in there, and the strikers were mostly Jews. I knew what would happen if they ever got together with clubs in their hands, for they were men who knew how to wield them. I was very much interested, and I could see where it was coming to. We hadn't yet reached the point where men got as many raps as they do now on the streets. It was an ugly situation.

The strikers had a number of those halls over there on the East Side, and they were swarming in them like bees. One afternoon, I just took my attendant and went up to Webster Hall. They didn't know who I was, but I got onto the platform, and I managed to convince them that I was a friend. When they found the President of the Police Board was on the platform looking at them, they were a little ugly at first, but I managed to pull together a few German words (I couldn't talk Yiddish, but I could say a few German words that I learned in school) and I told them in German practically what I said here — here are a lot of policemen up in the station house, and they are not all of your kind, mostly the other kind, and if you boys give them an opportunity by breaking the law to lay their clubs on you, there will be trouble. Now, if you will only help me and be peaceful, do your work peacefully here, I will try to take care of the other end of it, but you have to help me. Well, it was hard for me to get into the hall, but it was harder for me to get out.

I went right over to the station house and laid down the law to the captain and to the men that were there. From that day, the strike went along in as orderly a manner as you ever saw. There wasn't a rumpus on the street that anybody had to take notice of. Now, I saw then the insude of this situation. If that thing had

been allowed to go on, first thing you know, there would have been rumors through the town that the strikers were killing folks.

Mr. Brady.— I know the same thing about another police captain who has gone onto the strikers' platform and told the men what their rights were and what the rights of the police were, and there was absolutely no friction between them.

Mr. Moss.— I was charged with the duty of keeping order. Well, I kept order by keeping on both sides.

Mr. Brady.— None of these organizations make a specialty of providing gunmen in time of trouble.

According to this list, it would be logical to assume that it is decidedly unfriendly to labor organizations for the same reason that it is logical to assume that if one side is going to create trouble, the other side is. And they both should be watched on account of the public statements that have been repeatedly made, and even confessions that have been repeatedly made by people who have been employed by the city to break up — people in the city to break up strikes and create disturbances of one kind and other, so that they could get the men in bad.

It looks as if the Police Department was being used in the face of this sort of evidence and it is purely up to the administration of the Police Department to prove that they are not guilty of the things which we suspect.

There isn't any question in my mind, at least, and I doubt if there is in the minds of any others, as to the evidence with reference to the strike breaking agencies.

Mr. Tarbox.— There is one point there. I think that if the witness will examine the records of the Police Department for the last three years he will see that they have made every effort to prevent violence, and when they got information in advance that there was danger of there being any violence on either side, they have taken the course which Mr. Moss pointed to to prevent it. If they got information over the telephone that strikers were going to use violence they may have taken steps to prevent that. That doesn't show that they didn't get information about strike breakers in other cases.

Mr. Brady.— It seems to me that they could have adopted the

same method of getting that information from our unions. We would have been very glad to furnish them with any information desired.

Mr. Tarbox.— You already have.

Mr. Brady.— They can have our correspondence.

Mr. Tarbox.— Some valuable information has been given.

Mr. Brady.— But the employers whenever a strike is called, they advertise for strikebreakers, and you can find that in the press every day. But the mere fact that the ad is in the paper doesn't say that a crime is about to be committed, but it is logical for you or the Police Department to assume that there is liable to be trouble, and you are just as well justified in listening in on their wire as you have been justified in listening in on the wires of the unions as you have been.

Conciliation and the heads of the Police Department in this city couldn't prove conclusively to us that there hasn't been discrimination. There aren't any of them can do it. **This** proposition went to the Mayor, and is comment on it was "Fiddle Sticks."

Senator Thompson.— He meant me.

Mr. Brady.— Anyway I requested that an explanation be given as to why these wires were tapped, and the Mayor is responsible for the administration of the Police Department in this city.

Mr. Moss.— Mr. Brady, I have had a conference with the Chairman across the table, and we think it is fair to let you take this list in your hands right now and look it over, for it is possible that I don't know labor as well as you do, and I might have slipped a cog somewhere. You take this list and look it over and satisfy yourself that you have got everything that relates to the labor situation, and then it seems to me, Mr. Chairman, that at least so far as we are advised at present, without a full committee here, that we have gone as far as we ought to go today.

Mr. Brady.— With that list I would have to do this, because I know the unions that are on her — I am familiar with them,

but I would have to have some official of the union to look over the list to see if there was any name on that that was related with their employers. I could tell myself those affecting the printing trades without any trouble. I wouldn't have any trouble doing that, but the others should be looked over by the officers of the other unions. However, if you feel that you can't grant our request by publishing the number, we will have to do the next best thing and go to the District Attorney and demand that he go into the entire situation.

Mr. Moss.— Do you want to look at this list?

Mr. Brady.— I think we would be very glad to, because some numbers may be familiar to some of the others that are not familiar to me.

Senator Thompson.— You can take that up after suspension.

Mr. Moss.— All I want is that there is no copying of this list or publishing of this list. It is just a matter between ourselves.

Senator Thompson.— Of course, this is submitted to you on the condition that you won't publish it.

Mr. Brady.— We wouldn't publish the list.

Senator Thompson.— The only thing I see to it is this; that it may be that in some cases they are listed under some other name; they may have gotten some of their folks, and we wouldn't know from the list.

Mr. Moss.— That is all.

Senator Thompson.— I think it is fair to do that much. Mr. Moss suggests it.

Mr. Moss.— Well, you look at that in here.

Mr. Brady.— I will take it back here and we will go over the list completely.

Senator Thompson.— Dr. Potter has some remarkable wishes to make.

Dr. Potter.— Last night about 11:40, I was reading at my desk and I heard my telephone bell just faintly tick. I softly

lifted the receiver and heard this: "Is that you, Hayward?" "Yes." "Are you watching this wire tonight?" "Yes." "Are you going to stay on the rest of the night?" "Yes." "Well, I want you to do this." Probably by a loss of current or something of that sort they must have detected that the receiver was off the hook, and the authoritative voice said: "Well, what have you got to say, what have you got to say," and then that voice ceased.

Now, if you can believe anything, you can believe that my wire is still watched — still tapped, and this is what day of the month? The 12th of June. The order to watch my wire, I understand, was given on the 18th day of March, and yet the city authorities have repeatedly asserted that the wires are not watched.

Mr. Moss.— This seems to be a liver subject here, Mr. Chairman.

Dr. Potter.— I came in not intending to say anything of the sort. I intended to speak to Mr. Moss about a personal matter, but I was interested in hearing these people talk about information that they might get from the city government.

It doesn't make any difference what information you get from this city government, no confidence can be placed in it. (To Mr. Tarbox and his companion.) You gentlemen can record that, if you like. Furthermore, any information given today will be changed tomorrow.

Senator Thompson.— Any more conversations you hear on the wire, bring them in to us.

Dr. Potter.— Well, it is interesting to know that you are still being watched in the pursuit of crime.

I trust I haven't disarranged your arrangements.

Senator Thompson.— You are the only one that says it is an ill wind that doesn't blow some good. They evidently regard you as of some consequence.

Dr. Potter.— Still a criminal!

Senator Thompson.— We will suspend until tomorrow morning.

Suspension.



**JUNE 13, 1916.**

MUNICIPAL BUILDING, NEW YORK.

Meeting called to order at 11:15 A. M., Senator Thompson presiding.

Mr. Shuster.—Mr. Abel will kindly take the stand.

Q. You were the Auditor of the Brooklyn Rapid Transit Company and its allies? A. Yes, sir.

Q. I show the witness a chart of the Brooklyn Rapid Transit Company and subsidiaries' capitalization and relation to system and ask him if that is a chart that was gotten out by his Company or under his direction—the direction of its officers. A. This is a chart which was verified by me.

Q. The question was, Mr. Abel, was that a statement gotten out by your Company? A. No, sir.

Senator Thompson.—Do you know by whom that was prepared? A. It was compiled by Low, Dixon & Company.

Q. (By Mr. Shuster.) It was submitted to you and you compared it? A. We corrected it.

Q. Your corrections appearing here in rubber stamp and red ink figures? A. The original statement was corrected before it was printed. The typewritten modifications in that statement are to bring the statement down to date to comply with the request which we received from Chairman Thompson recently.

Q. And this was submitted by you in response to that subpoena letter? A. Exactly.

Q. It was brought down to March, 1916? A. Yes, if it bears that date.

Q. Mr. Chairman, I would suggest that this be made an exhibit in this investigation.

Senator Thompson.—Are there any more copies of this? A. Yes.

Senator Thompson.—I want this run into the record at this particular point in the record.

(Chart immediately follows this page, marked, Exhibit No. 1, June 13, 1916.)

This covers all the companies allied to the Brooklyn Rapid Transit Company, or the subsidiaries of the Brooklyn Rapid Transit Company? A. I think there is one little company that isn't reflected there. That is the Coney Island and —

Senator Thompson.— Who owns the stock in that Company? A. I am not sure whether the Brooklyn Rapid Transit Company owns it or the Coney Island and Brooklyn Terminal Company owns it. I believe it is owned by the Coney Island and Brooklyn Terminal Company.

Mr. Shuster.— There are eighteen companies represented in that statement, how many outside of this eighteen are controlled by the B. R. T. — outside of that? A. I don't know of any companies controlled by the Brooklyn Rapid Transit Company outside of the companies represented there, except this little Coney Island and Brooklyn Terminal Company. There is only about five hundred dollars all told in that.

Senator Thompson.— You go from a red line connected with the Coney Island and Brooklyn —? A. Yes.

Senator Thompson.— Suppose you correct that on the chart. A. (Witness made corrections on diagram.) I think it is capitalized at about five hundred dollars, and that is about it.

Q. (By Mr. Shuster.) The Brooklyn Rapid Transit Company controls and dominates each of the corporations scheduled on this chart? A. I couldn't say as to that.

Q. Will you state what companies it does control on that chart?

Senator Thompson.— And with the capitalization of each company. A. The Brooklyn Rapid Transit Company controls, through stock ownership, directly or indirectly, all the companies embraced in this statement.

Senator Thompson.— Lets start off then with the Brooklyn Rapid Transit with a capitalization of ninety thousand dollars.

Mr. Shuster.— He says that the Brooklyn Rapid Transit Com-

pany controls all the stock of these companies. I don't understand that to be exactly true.

Senator Thompson.—Certainly these companies are under a lease to the Brooklyn Rapid Transit Company and don't control the stock in all these companies.

Mr. Shuster.—Well, I presume Mr. Abel knows when he says it. A. The Senator is right in a way.

Q. (By Mr. Shuster.) I know that the Brooklyn City is leased. A. I think you are laboring under a misapprehension.

Senator Thompson.—Yes, the Brooklyn City is controlled under a ninety-nine year lease.

Q. (By Mr. Shuster.) The Nassau Electric? A. The Nassau Electric is controlled by the Brooklyn Rapid Transit through ownership of practically all the outstanding stock.

Senator Thompson.—I would like to get the total amount of this capitalization, if I could.

Mr. Shuster.—From this chart it appears there is sixty-four million —

Senator Thompson.—Were you Actuary too? A. I guess I am too.

Mr. Shuster.—The Judge here will figure that out.

Senator Thompson.—I want each one together.

Mr. Shuster.—The Brooklyn Rapid Transit Company capitalization, as it appears from this chart, is as follows: Capital stock outstanding, \$74,455,218.

Senator Thompson.—Just give the total outstanding capitalization.

Mr. Shuster.—You can't do it unless you add it up. I think perhaps it might be better for the record if we would separate so-called stock capital from bond capital.

Senator Thompson.—There isn't any difference. All we are interested in is how much they have got there.

Mr. Shuster.— Well that is what your object is. (Hands chart to gentlemen next to him to figure.)

Mr. Abel, you are familiar with the various steps in the transactions had in the financing of the New York Municipal Railway Corporation operations? A. Yes, sir.

Q. Will you state briefly just how your company — companies financed its contract No. 4 and the allied certificates? A. In October, 1912, during the subway negotiations the Brooklyn Rapid Transit entered into an agreement with the New York Municipal Railway Corporation, by the terms of which it agreed to furnish whatever moneys were necessary to finance this subway undertaking. The New York Municipal Railway Corporation was a new company not known, and it was necessary to use the resources and credit of the Brooklyn Rapid Transit Company to raise the necessary money. The Brooklyn Rapid Transit Company arranged with the bankers to sell, in the first place, forty millions, and subsequently, twenty millions additional, making a total of sixty million, six year five per cent. notes; the notes to be taken on a six per cent. basis, less commission of one per cent.

Senator Thompson.— Who got the commission? A. I beg your pardon.

Senator Thompson.— Who got this commission? A. The bankers.

Q. (By Mr. Shuster.) Now, will you explain — A. I am not through. The B. R. T. Company was required, under the terms of the indentures securing the notes, to pledge the proceeds of the notes and in addition ten million dollars of its own four per cent. refunding bonds as an additional collateral, and further to pledge, as soon as the same became available, the first mortgage bonds of the New York Municipal Railway Corporation, which were to be purchased with the proceeds of the sale of the notes so far as the said proceeds would apply. The entire negotiations with the city were predicated on the six per cent. interest return. The bonds, which are long terms bonds, were sold at ninety-seven to bear five per cent. interest and under the subway contract the interest charges of five per cent. plus one per cent. for amortization, making six per cent. after July 1, 1918; and the notes were

also taken on a six per cent. basis to cover the interim, 1912 to 1918.

Q. Now, will you explain what you meant by the phrase "five per cent. basis?" A. Well, the bankers preferred to have a five per cent. note instead of a six per cent. one. It was immaterial to the Brooklyn Rapid Transit Company which they took so long as the rate of interest was not unsatisfactory, and the bankers preferred a five per cent. note on a six per cent. basis and that results to the same thing.

Q. Well, do you know why? A. Why I presume that a great many people like to buy something at less than par.

Q. And how much were those notes sold for, in fact. A. Why something like ninety-four per cent. of the face.

Q. Ninety-four per cent. of the face. What amount was sold? A. In the first instance, forty million, and in the second instance, twenty million, aggregating sixty million. They were sold on the basis of six per cent. but the proceeds were varying amounts because they were sold at different dates.

Q. But the amount of the proceeds would average about ninety-five cash proceeds, in the cash sale of those notes? A. Well, I don't have the exact figure in mind.

Q. Approximately?

Senator Thompson.—Six per cent. on ninety-four would draw more than five per cent.

Q. (By Mr. Shuster.) You are sure that that discount was not as low as three per cent. that the bankers exacted on any of those notes? A. I don't understand your question. The last twenty million notes were sold, or rather the last twenty million notes brought that, I think. The net proceeds from the first forty million notes was ninety-four point naught two three, 94.023, and from the last twenty million ninety-four point four nine five, 94.495.

Q. Now, those notes were secured by an agreement of trust running to the Central Trust Company as trustee, were they not? A. Yes, sir.

Q. And was there in that agreement any limitation as to the amount that the cash proceeds from the sale of those notes which should be deposited and lodged with the Trust Company before

the notes were released? A. The entire proceeds had been lodged with the trustee.

Q. Well, of course, the entire proceeds, but you say here the proceeds, in one instance was ninety-six and a fraction and in another instance about ninety-four and a fraction. A. Yes, sir.

Q. Now, that would be the proceeds with any accruals of interest so that there was a discount on the sale of all the bonds of more than three per cent. A. This isn't bonds we are talking about. We are talking about notes.

Q. On the sale of all the notes of more than three per cent.? A. If you want to call it discount, yes.

Q. Well, what do you call it? A. Well, notes sold, that is what I call prepaid interest. That is, a five per cent. note on a six per cent. basis.

Q. I haven't it clear yet in my mind what you mean by "six per cent. basis." A. So as to net the buyer six per cent. on the actual money he pays. And it takes out the one per cent. commission. The six per cent. basis for a five per cent. note having, I think, five and a half years to run ahead of that time or five and three-quarters years is 95.023.

Q. Can you describe to us just what transaction took place, what physical transaction took place between your company and the bankers at the time those notes were sold on that six per cent. basis and delivered? A. The bankers placed to the credit of the Brooklyn Rapid Transit Company the proceeds of the notes.

Q. The proceeds of the notes requires an explanation.

Senator Thompson.—To net the purchaser six per cent. you will have to sell those five per cent. papers at eighty-three and a third; six per cent. on eighty-three and a third produces five dollars.

Q. (By Mr. Shuster.) Is it not a fact that the bankers withheld — deducted from the sale price one per cent. for the period of five and three-quarters years on all of the notes they purchased? A. The bankers withheld from the proceeds four hundred thousand dollars on the first forty million and two hundred thousand dollars on the second lot of twenty million.

Q. Now, that was their commission? A. Yes, sir.

Q. Now, in addition to that they withheld or had prepaid to

them one per cent. or an amount equal to one per cent. on the forty millions of notes for the period those notes had to run? A. They gave us the proceeds of 95.023 per cent. of the par of the forty million and they gave us 97.495 per cent. of the par of the twenty million.

Q. You said 96 a while ago. A. I said that.

Q. Didn't the bankers collect from the Brooklyn Rapid Transit Company what they called interest from October first, 1912, to the end of the term of the notes figured at one per cent.? A. They collected in advance the difference between five and six per cent. The note was to carry five and their contract was six per cent. return. They got it in advance.

Q. So that interest, if it was interest, was collected before it would fall due by the terms of the note? A. Yes, and they gave us the present worth of that.

Q. What do you mean by that? A. I mean that the calculation of 95.023 takes into consideration the payment in advance.

Q. That you call interest? A. Straight interest.

Q. Wherein does that differ from discount? A. It depends on your trade.

Q. What depends on your trade? A. The whole negotiation was on a six per cent. basis. The banker said, "I want five per cent. bonds to net me six per cent. instead of a six per cent. bond to net me six."

Q. Are you familiar with the contract? A. Yes, sir.

Q. The agreement with the Central Trust Company? A. Yes, sir.

Q. I will read from that agreement:

"An agreement between the Brooklyn Rapid Transit Company, the Central Trust Company of New York, as trustee, designated as the trust agreement, dated July 1, 1912. and given to secure sixty million dollars, six-year five per cent. secured gold notes."

Reading from Article 1, Section 2, page 11, as follows:

"The Transit Company — That is the Brooklyn Rapid Transit Company — may from time to time sell and deliver notes bearing the serial numbers, 40,001 to 60,000, both in-

clusive, or any of them, in advance of delivery to and pledge with the trustee of first mortgage bond in the amount required by the foregoing provisions of this section and upon the deposit with the trustee of the cash proceeds resulting from the sale of notes bearing any such number. But, in no event, shall such deposit be less in amount than ninety-seven per cent. of the face amount of the notes so sold together with accrued interest on said notes. The trustee shall authenticate and deliver the notes so sold by the Transit Company."

Now, was that condition in the trust agreement observed in the sale of these notes? A. Yes, sir.

Q. And yet, your cash proceeds from the sale of these notes was less than ninety-seven per cent. of the face amount of the notes? A. Yes, sir, and the B. R. T. furnished the difference from its other funds.

Q. Do you recall what that difference was, if not in amount, can you recall the per cent.? A. Well, it is to make ninety-seven per cent. of the face value, in order to furnish the entire amount necessary to pay the ninety-seven per cent. of the face of the bonds.

Senator Lawson.—What do you mean, Mr. Abel, by the B. R. T. Company furnishing the difference from its other funds? what other funds? A. Borrowed money perhaps or earnings.

Q. (By Senator Lawson.) On what basis would you borrow if you had to borrow? A. Whatever you had to pay the banker. It might be five per cent. or six per cent., whatever you had to pay.

Q. Well, what would you borrow that on, additional notes? A. Probably.

Q. (By Mr. Shuster.) Well, the amount of it — the B. R. T. Company — that difference that it had to make up between the actual cash proceeds and the requirement of this condition of ninety-seven per cent. of the face, that was charged against the New York Municipal Railway Corporation and collected? A. Yes, sir, pursuant to the contract of October 1, 1912.

Q. And that is the item contained in the bill rendered for interest by the Brooklyn Rapid Transit Company to the New York Municipal Railway Corporation under date of March 19, 1913, and allowed in the prior determination by the Engineer and the Public Service Commission aggregating \$1,990,800? A. Yes, sir.



Q. So that, regardless of what the Brooklyn Rapid Transit Company may have paid to float its notes that deficit or loss or cost, whatever you are a mind to call it, was ultimately paid by the New York Municipal Railway Corporation and charged to contract No. 4? A. Yes, in accordance with its terms.

Senator Thompson.— Well, it was anyway? A. In accordance with the contract.

Q. (By Mr. Shuster.) This trust agreement was authorized by your directors with the consent of at least two-thirds of your stockholders, was it not? A. I think so.

Q. And the provisions contained in this trust agreement were the provisions and conditions which the stockholders of your corporation expected to be carried out by the officers of that Company in negotiating its notes, is that true? A. I don't just know when the stockholders' meeting was held to ratify that transaction. I think the stockholders of the Brooklyn Rapid Transit Company probably ratified that transaction at their annual meeting following the date of the contract but the directors —

Q. I see, this was not then an action taken by the direction and with the approval and consent of the stockholders, but it was one that was ratified after this became an assured fact? A. Well, that is my recollection.

Q. Evidently the conditions in your trust agreement were not controlling when it came to financing the project. A. Well, I think they were controlling.

Q. So that when your last twenty million bonds were sold you did not, so far as the Brooklyn Rapid Transit Company in the first instance was concerned, dispose of those bonds at a discount of not to exceed three per cent.? A. The bonds have been sold — I mean the notes — the notes have been sold on a six pr cent. basis and the bonds have been sold at ninety-seven.

Q. Doesn't the term discount have any definite and fixed meaning in finance? A. Well, I presume it does.

Q. A discount is that which is deducted from the face value of your obligation? A. So is prepaid interest.

Senator Thompson.— Just answer the question. Is the discount that which is deducted from the face value of your obligation? A. It may be.

Q. (By Mr. Shuster.) Well, is it not always considered a discount whether deducted from the face value of your obligation?

A. It depends what the sale is. If you sell a note on a six per cent. basis, it isn't a discount. If you sell a six per cent. note on a five per cent. basis it is prepaid interest.

Q. So there is no distinction or difference between prepaid interest and discount, is that true? A. I won't — wouldn't say that.

Q. Well the operation is identical in each case, is it not? That is, at the time of the passing of the money, whether prepaid interest or discount, is identical, is it not? A. It depends what your trade is.

Q. Trade or no trade, at the actual transaction, at the instant the money is passed — A. Well, you can call it either, I don't care what you call it.

Q. But it is identical? A. I don't subscribe to that. I say it depends on the trade as to what it is.

Q. (By Mr. Stover.) I understand that the New York Municipal Railway Corporation for the purpose of financing the proposed subway, raised forty million dollars by the sale of the notes. A. It sold forty million notes.

Q. Well, you were allowed in the prior determination, made by the Chief Engineer, interest on the forty million dollars from October 1, 1912, up to the time of the making of the determination, were you not? A. Less whatever interest accrued on the proceeds.

Q. Well then, you were allowed all the interest that you are entitled to on the full amount of money raised under the terms of the contract, were you not? A. Yes.

Q. Well, what is this other allowance? A. What other allowance do you allude to?

Q. The so-called interest or discount on the sale of the notes? A. The only interest allowed in the determination is six per cent. per annum from the date of the note to 1918.

Q. Yes, but having been allowed all the interest that you are entitled to be allowed under the terms of the contract, this other allowance must be discount, isn't it? A. There is no duplication of allowance. There is nothing more than six per cent. It is a misapprehension on your part as to what transpired. Under the terms of the subway contract, we are allowed six per cent.

Q. Can you locate that in the contract anywhere? A. Under the terms of the subway contract we are allowed any interest on moneys borrowed in behalf of the New York Municipal.

Q. Well, as I understand the contract, you wouldn't be allowed interest from October 1, 1912, on the forty million you raised. A. You want to bear in mind that the whole negotiations were predicated on the six per cent. The five per cent. which is paid each six months goes in as part of the cost, the one per cent. goes in as part of the cost and the net result is six per cent.

Q. (By Mr. Shuster) At the time you entered into the agreement with the bankers on the so-called six per cent. basis, there was at that time no contract executed and existing between the city and the New York Municipal Railway Corporation? A. It was in process.

Q. Was it in existence, executed and delivered? A. It was not.

Q. Had the negotiations been formally closed and determined upon? A. The negotiations were formally closed in March, 1913. This money was borrowed in 1912.

Q. Your agreement in regard to this matter with the New York Municipal Railway Corporation was made under date of October 1, 1912? A. Yes, sir.

Q. When was the agreement with the bankers made? A. Some-time that year, I am not sure as to the exact date of it.

Senator Thompson.— Before or after October 1st? A. I think there was a tentative proposition— about July 1st.

Q. (By Mr. Shuster) July 1st? A. Yes, sir, that is dated July 1st.

Q. But that was even prior to the execution of the contract between the city and the New York Municipal? A. I am not sure as to that.

Q. Well, the contract between the city was in March, 1913, and this was October, 1912? A. It might have been.

Senator Thompson.— You are testifying because you have a knowledge of these things. If you call it discount you can pay it back but if you call it interest or something besides that you might be able to get away with it. A. Not at all. The definition of interest under the contract is this: —

Senator Thompson.— Well, I don't care for that, you may give that after I go.

I found the total outstanding capitalization of these nineteen companies is \$361,246,652. The items of each company will be given by the Actuary there.

I want to be excused now a little bit. Senator Lawson, will you take the Chair.

Senator Lawson presiding.

Mr. Yeomans.—We had an agreement with the city way back in June, 1912, by which we had agreed to enter into a contract with the Company to be formed with the city and under that arrangement we started out to provide these funds. So these funds were provided long prior to the antedating of the subway contract.

Q. (By Mr. Shuster) But, whatever agreements were entered into or understandings had prior to March 19, 1913, became merged in the contract of March 19, 1913?

Mr. Yeomans.— That is true.

Q. And that is controlling between the parties and nothing else?

Now, what allowance of interest is fixed by the terms of the contract with the New York Municipal, taking it from the contract? Reading from the contract: "Interest actually and necessarily paid or accrued on moneys provided by the lessee or on its behalf from time to time." The items of this definition from the respective times of providing said moneys, but not including interest on any moneys provided by the lessee or on its behalf prior to October 1, 1912, to the beginning of operation of part of the equipment for which such moneys were provided less any interest received by the lessee or on its behalf on such moneys." A. That condition was observed.

Q. Now, we are in entire agreement on this one clause in the contract as to what it reads. It is the interpretation of that clause, is where we differ. We have no quarrel with you, that you are entitled to such interest as is actually and necessarily paid or accrued to your corporation or on its behalf for the purposes of carrying out this contract. Now, you did provide how much in the first in-

stance on behalf of the New York Municipal? A. We sold forty million notes.

Q. And when did you do that? A. October, 1912.

Q. And you were allowed interest on it from that date? A. Yes, sir.

Q. And received the interest or discount, whichever it may be? A. Well, we are allowed to charge against the cost of construction or equipment, as the case may be, interest that we pay on any moneys that we borrow under that agreement.

Q. And you have been allowed and charged interest on the forty million? A. Up to six per cent.

Q. No, at five per cent. A. We have been allowed at six and we will get six after 1918.

Q. Are you allowed in the prior determination to charge—what did you pay in interest as such? A. The difference between par and the proceeds of the notes in the first instance.

Q. And was that in excess of five per cent.? A. It was to make the notes net six.

Q. So that it was in excess of five per cent.? A. Six per cent.

Q. Now the terms of those contracts were five per cent. interest, were they not? A. The notes bear five per cent. interest.

Q. So that anything paid by the company over and above that five per cent. was outside the terms of the notes? A. It was money borrowed in behalf of the lessee and is referred to in that paragraph giving the definition of interest. If it had been otherwise the language of that paragraph would have been differently stated. After 1918 six per cent. is allowed as a deduction under the contracts, and if it had been otherwise the interest return would have been less than six per cent. during construction and six per cent. thereafter. It was not intended for anything of the kind. The whole negotiation was based on six per cent. returns and that is what is charged.

Q. In this transaction, so-called prepayment of interest was deducted or withheld at the time of passing over the proceeds of the sale of the note? A. Yes, sir.

Q. So that you had to discount the face of the note to one per cent., or by one per cent. in order to get on the six per cent. basis,

did you not? A. Well, I don't understand your characterization of it.

Q. Just the word discount? A. We had to take ninety-five and a fraction instead of par of the note because the note only bore five per cent. interest. If we sold a six per cent. note we would have gotten par and there was no question about it, but we sold a five per cent. note on the six per cent. basis and the result is the same. I see what you are driving at, if we had been limited to five per cent. for the period of the notes then we would have been getting five per cent. during the construction period and six per cent. thereafter. The contract doesn't contemplate and doesn't express anything of the kind.

Q. But you were limited to five per cent. of par in your notes. A. I beg your pardon, if we paid ten, it is included in that contract.

Q. Oh! I think probably that might be interpreted that way. Now, as a matter of fact, aside from this six per cent. basis arrangement, you were allowed a greater discount than three per cent., were you not, on the sale of your bonds by the New York Municipal? A. The New York Municipal got exactly ninety-seven per cent. of the face of its bonds. The three per cent. discount is allowed periodically by the Chief Engineer and forms a part of the cost of construction.

Q. Now, then in addition to that did not the New York Municipal Railway Corporation make up the difference between the par value of the notes and the cash proceeds received from the bankers? A. Yes, to the extent of six per cent. interest.

Q. Only? A. That is all.

Q. Did the New York Municipal Railway Corporation reimburse the Brooklyn Rapid Transit Company for the one per cent. brokerage charged by the bankers? A. We gave them its note.

Q. That is all? It was never paid the money? A. The Brooklyn Rapid Transit Company holds the New York Municipal's notes for that discount today.

Q. So that that matter hasn't been cashed in but the obligation has been created against the New York Municipal? A. The obligation was created on October 1, 1912, when they made the contract.

Q. Now, the New York Municipal Railway Corporation after it was organized, issued a mortgage securing the bonds? A. Yes, sir, carrying five per cent. interest.

Q. Carrying five per cent. interest? A. Yes, sir.

Q. Those bonds were sold to the Brooklyn Rapid Transit Company on a six per cent. basis? A. At ninety-seven.

Q. And their interest was five per cent.? A. Yes, sir.

Q. But haven't they paid six per cent.? A. Who?

Q. The New York Municipal? A. No, sir.

Q. Didn't they reimburse you in interest as allowed by the Public Service Commission in the prior determination for that one per cent. that the bankers took out of you? A. They allow five per cent. No, sir, they did not. We are allowed to charge the actual interest as it is defrayed on the New York Municipal bonds and against that interest when as any part of the line goes into operation, is assumed and sixty per cent. is deducted and the one per cent., the difference between five and six, is credited to the cost of construction until 1918.

Q. Now, in the bill that you rendered the New York Municipal Railway Corporation and upon which the determination was predicated, you are allowed in separate items, the interest on the forty millions par value of notes, from October 1, 1912, to December 31, 1912, and by another separate item the interest from January 1, 1913, to March 19, 1913, the date of the making of the agreement, and in addition to that, those are five per cent. interest rates you are allowed there; in addition to that, you are allowed on a basis of six per cent. on forty millions of dollars from October 1, 1912, to maturity period of the note, all of which is charged against the New York Municipal, is not that true? A. No, sir.

Q. Well then, explain that to us. A. The bill rendered by the Brooklyn Rapid Transit Company to the New York Municipal is for the interest that was paid on the Brooklyn Rapid Transit notes at the time of the sale and that amounted to a million nine hundred ninety thousand eight hundred dollars.

Q. Now, that was at the time of the sale of the bonds? A. Of the notes.

Q. Of the notes? A. That is the one per cent. difference be-

tween five and six for a period of six years less the discount to make the present worth, which is the difference between these figures, one per cent. for six years on forty million dollars less four hundred nine thousand two hundred to give a present worth of that amount. The other charge that is embraced in this bill is the actual five per cent. interest from the date of the notes being sold to the date when bonds were sold.

Q. That is what I intended by my query and I probably didn't make myself clear. I agree with you on that understanding. Now, can you tell me how much the New York Municipal Railway Corporation paid to finance its sixty millions of bonds, that is, to convert those into cash? If it is easier for you take the forty million first and then the twenty million afterwards, as there were two separate transactions. A. Well, I don't have any figure in mind. I can get it for you very readily.

Q. Can you make a rough computation there? A. I should say roughly about five million and a half.

Q. What per cent. of the total would this be? A. Something over eight per cent.

Q. So that the actual cost to the New York Municipal was something over eight per cent. to finance their contract number four and its allied certificates. How much of that was discounted? A. That is disregarding the fact that the major part of that is due to a short term note. If you take the interest and spread it over the entire life of the bonds it isn't any such figure.

Q. You have asked here in this prior determination to have that margin of eight per cent. of cost capitalized, have you not? A. We have asked to have the actual interest of the Brooklyn Rapid Transit Company paid and the actual interest that the New York Municipal will have to pay during the construction period capitalized, yes.

Q. Where the contract provides that you shall not be allowed, as a credit on the construction contribution, to exceed three per cent. does that mean that you can go ahead and charge this eight per cent.? A. That means that the Municipal bonds must be sold at ninety-seven. It has nothing whatever to do with any moneys of the Brooklyn Rapid Transit Company in behalf of the New York Municipal.



Q. I know, but whatever the Brooklyn Rapid Transit Company provides is simply loaned to the New York Municipal or used on its behalf and must be reimbursed to it by the New York Municipal, is not that true? A. Yes, sir.

Q. So that the whole thing resolves itself down the same as if the New York Municipal Railway Corporation had the direct transaction in the financing of the project in the last analysis? A. Well, I wouldn't say that because you have got two separate provisions in the contract. You have got one that provides for a fixed discount on the Municipal bonds and you have got one that provides for a fixed obligation of interest on moneys borrowed.

Q. And you have got an agreement in regard — your trust agreement, under which the notes were issued. The trust agreement under which the bonds were issued, have a fixed determinate rate of interest and a fixed determinate rate of discount, have they not? A. I don't think the trust agreements refers to the rate of discount.

Q. I read it to you from the trust agreement here. A. As to the notes?

Q. As to the notes. A. Well, I haven't anything to say about the trust agreement.

Q. Are we to understand no matter what they may be, whether they are trust agreements or agreements with the city, they can be ignored or ruthlessly cast aside? A. They haven't been ruthlessly cast aside. They have been lived up to religiously.

Q. That they shall receive five per cent. interest? A. Yes, sir.

Q. And you concede here that you paid them six per cent.? A. We concede that we sold the notes.

Q. Well, that is all outside of the contract, isn't it? A. No, it is not. When the contract was made, October 1, 1912, nothing relative to the financing of this transaction was in existence.

Q. Did it make this discount interest because the Public Service Commission resolved that it should be deemed interest and not discount? A. The Public Service Commission didn't have anything to do with it. It is interest because that is the basis of the negotiation and that is the language of the contract, "Interest payable or accrued by or in behalf —."

Q. Well now, the interest was five per cent. was it not? It was

fixed in the notes and bonds, was it not? That is interest, isn't it? A. The bankers insisted on a six per cent. transaction and we sold them the notes on a five per cent. note on a six per cent. basis, in order to give them that return.

Q. Wherein was your transaction different from this simple transaction? I go to the bank with a one hundred dollar note bearing five per cent. interest. The bank says, "We will take your note but we will discount it one per cent." They pay me in cash the face of my note less one per cent. for the term of the note. Wherein is there any difference in the transaction, between those two transactions? A. The difference is right here, that when we took this matter up we were negotiating with the city all through 1912, we were talking six per cent. money all the time and when the banker said, "I want a five per cent. note that bears six per cent. interest," we said, "We have got to get the six per cent. in the subway contract. We have got to get it as interest," and the contract was drawn so as to cover that specifically. That is what it means in its behalf. If it doesn't mean that, then that language doesn't mean anything. If it is straight six per cent. then it is covered in the contract.

Q. Now that six per cent. — A. It is a contract between the New York Municipal and the Brooklyn Rapid Transit Company on New York Municipal and the Brooklyn Transit Company on which the Public Service Commission acted at the time these subway negotiations were on, and it was the knowledge of that contract that caused that language to be vested in the contract to cover it.

Q. Is there anything that is in the contract between the city and the New York Municipal that in any wise refers to the agreement between the Brooklyn Rapid Transit Company and the New York Municipal? A. Not specifically, no.

Q. And are you willing to swear that this transaction with your bankers was before the conferees in this express form, as set forth in that contract at any time prior to the execution of the contract? A. The October 1, 1912, contract, yes, sir.

Q. Before what city officer? A. That was before the contract was entered into.

Q. Were you present? A. I wasn't, but I saw the exchange of correspondence.

Mr. Yeomans and Colonel Williams.—And afterwards were referred to by all negotiators.

Q. Well, now your contract here was between the two corporations.

Mr. Yeomans.—I show you the exhibit there purporting to be a copy of a contract referred to by the witness.

Q. Was that contract in that form filed with the conferees representing the city or the Public Service Commission prior to the making of the contract of March 19, 1913?

Mr. Yeomans.—Well, the substance —

Q. Was that express contract before the conferees?

Mr. Yeomans.—This express contract was before the Public Service Commission.

Q. The Public Service Commission approved the mortgage of the New York Municipal, when?

Mr. Yeomans.—March 20, 1913.

Q. March 20, 1913, that was subsequent to the execution of the contract?

Mr. Yeomans. — But long prior to that the whole financing arrangement, all that memorandum, we gave it to you there. was taken up with the Public Service Commission. How we were going to finance the proposition, the arrangements for financing, the lawyers and bankers were there, the representatives of the bankers were there and it was informally approved of by the Public Service Commission and just what date that was, I don't remember, but it was long prior to June 10, 1912.

Q. Well that was at the time they were passing upon the trust agreement? A. Yes.

Q. What did the Public Service Commission have to do with the negotiations and allowance of mortgage by the Brooklyn Rapid Transit Company?

Mr. Yeomans.—We are expecting to negotiate and were negotiating with the Public Service Commission and the Board of

Estimate and Apportionment. We had entered into a tentative arrangement with the city on June 10, 1912. We immediately started out to get our money and to make our arrangements for it as we knew the arrangement with the city would finally be entered into formally. We took it up with the Commission so that there could be no question about our arrangements and so that the contract should show and protect all of this arrangement and what our arrangement was with the bankers.

Q. Then why did you not, in express terms, refer to this arrangement in your contract?

Mr. Yeomans.— Well, it wasn't necessary that that be referred to, any arrangement by which moneys were provided on behalf of the New York Municipal in this trust agreement.

Q. Regardless of what it was?

Mr. Yeomans.— Yes, absolutely.

Q. The city conferees and the Public Service Commission were indifferent to that?

Mr. Yeomans.— They knew all about it and they had knowledge of all this arrangement and they knew it was to provide moneys as long as it did not attach to moneys prior to October 1, 1912.

Q. The agreement, the trust agreement between the B. R. T. and the Central Trust Company, was that submitted for the approval of the Public Service Commission?

Mr. Yeomans.— No.

Colonel Williams.— The substance of the trust agreement was all reported in the Public Service Commission on June 10, 1912, and incorporated in that memorandum.

Q. Well, was it the contemplation of the parties representing the city and yourself that no matter what you had to pay for it, that it should be charged to the construction?

Colonel Williams.— Well at the time we entered into the contract they knew exactly what our arrangement was and what we were going to do and, therefore, the definitions were made to

cover all that. A. (By Mr. Abel.) The city had a bigger interest in this matter than we had, Mr. Shuster.

Q. I agree with you there. A. I mean as to this question of interest. Their interest charge was retroactive.

Mr. Yeomans.— They had the same interest we did, the same view on that.

Q. The objection isn't to what you have to pay for your money, the objection here is what you are trying to get back in excess of what we interpret the contract to allow you. A. We are trying to get back the six per cent. interest rate that was contemplated in all the subway negotiations and provided for in the contract. To give it your version, we would be getting five per cent. to 1918 and six per cent. thereafter. That would be absurd.

Q. How is that? A. To give it your version, we would be getting five per cent. to 1918 and six per cent. thereafter. That would be absurd.

Mr. Yeomans.— You see, Mr. Shuster, the city want an interest charge on the Center Street Tube.

Colonel Williams.— If you will look at the interest charge you will see that it runs up into a great many hundreds of thousands of dollars on the part of the city.

Q. This document of June 13, 1912, addressed to you and signed by Albert Rathbone — he was an officer of the Central Trust Company?

Colonel Williams.— Counsel.

Q. Now, I find at the bottom of it a memorandum as follows:

“ The within outline of financial program was informally approved by Commissioners Willcox, Eustis and Williams at conference at 12:15 to-day at which were present the above and Com. Maltbie and also Messrs. Sheehan, Yeomans, Rathbone, Cravath and Williams.

“ T. S. W., June 14, 1912.”

Did you know whether there was any record made of this in the Public Service Commission's office?

Colonel Williams.— I suppose there must have been, but I don't know.

Q. Is it your recollection that a copy of this, an exact copy of this was filed with each of these commissioners?

Colonel Williams.— With the Commission, I don't know that a separate copy was filed with each one. Mr. Rathbone sent five copies to the Commission. There is also some correspondence on this conference.

Q. You don't know whether this was transmitted to these Commissioners as confidential information or for the public?

Colonel Williams.— I do not know.

Q. Now in this these notes ran for six years, did they not, Mr. Abel? That is from July 1, 1912? A. (By Mr. Abel.) July 1, 1912, yes, sir.

Q. Have you any figures with you that will show how much actual money you received on same — of the forty millions and later on the twenty millions? A. The proceeds on the first forty million exclusive of the accrued interest was thirty-seven million six hundred nine thousand two hundred dollars and on the second lot of twenty millions exclusive of accrued interest was nineteen million two hundred ninety-nine thousand dollars, a total proceeds of fifty-seven million six hundred seventy-seven thousand six hundred forty-four dollars forty-four cents, with the accrued interest.

Q. Now on that transaction under the contract you would have been allowed to charge one million two hundred thousand dollars on that discount item? A. That is provided for there in the contract and is taken in piecemeal by the Chief Engineer. That is, it is spread over the entire undertaking.

Q. Now then, the difference on the forty million transaction between the par and what you received in cash is two million three hundred ninety thousand eight hundred dollars and deducting your three per cent. discount of one million two hundred thousand dollars, it leaves you one million one hundred ninety thousand eight hundred dollars, which is interest? A. Then you want to deduct again the accrued interest because that interest has to go to pay the next coupon.

Q. But it will be charged in then? A. No, the interest that the buyer pays on the bond furnishes the wherewithal to pay the coupon when it matures.

Q. The purchaser is paid the accrued interest? A. The accrued interest at the date of purchase so that he gets a full coupon at maturity.

Q. Have you that amount? A. Seven hundred sixty-nine thousand four hundred forty-four dollars forty-four cents.

Q. That was the amount of accrued interest on the forty million at October 1, 1912? A. And on the twenty million subsequently sold.

Q. Well, we have been figuring only on the forty million here. That makes your difference, Mr. Stover.

Q. Well, your difference there figures up to six per cent.? A. All that has been charged, Mr. Shuster, is six per cent. on the money provided by the Brooklyn Rapid Transit and six per cent. on the money provided by the New York Municipal will be provided and at 1918, that is the five per cent. sinking fund which furnishes the wherewithal to buy back the properties.

Senator Lawson.—Who are the officers of the New York Municipal Railway Corporation, what are their names? A. T. S. Williams, President.

Senator Lawson.—Who is the Vice-President? A. C. D. Meneely.

Senator Lawson.—Who is the Assistant Vice-President? A. Mr. Brown. Mr. H. A. Bullock is Secretary.

Senator Lawson.—Who are the officers of the Brooklyn Rapid Transit Company? A. Mr. Williams, President and Mr. Meneely, Vice-President.

Senator Lawson.—Who is the Assistant Secretary? A. Mr. Brown. Mr. J. H. Bennington is Secretary.

Senator Lawson.—I show you exhibit No. 1, June 7, is that an authentic copy of that agreement so far as

A. Why, I think so, Mr. Sanford was Assistant Secretary at that time. He is now. Mr. Meneely is Vice-President still and Mr. Bullock is Secretary. I think so.

Senator Lawson.— This agreement is signed on behalf of the New York Municipal Railway Corporation by Mr. T. S. Williams, President, on behalf of the Brooklyn Rapid Transit Company by C. D. Meneely, Vice-President. As a matter of fact Mr. Williams is also president of this company and Mr. Meneely is Vice-President of this Company.

Q. Well, what relation does the New York Municipal Railway Corporation bear to the Brooklyn Rapid Transit Company? A. The New York Municipal Railway Corporation was organized at the express request of the Public Service Commission and the representatives of the Board of Estimate and Apportionment. They wanted a company that had no obligation to make this subway contract.

Senator Lawson.— Is it a subsidiary corporation of the Brooklyn Rapid Transit Company or vice versa? A. The New York Municipal Railway Corporation is one of the Brooklyn Rapid Transit subsidiaries.

Senator Lawson. (Acting Chairman)— Well, we will take a recess now until 2:30 P. M.

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### AFTERNOON SESSION.

Meeting called to order at 2:30 P. M. Senator Thompson presiding.

Q. (By Mr. Shuster.) Have you with you a copy of the prior determination? A. No, sir.

Q. Well, I will let you take my copy and on page forty-six I direct your attention to the bill rendered by the Brooklyn Rapid Transit Company to the New York Municipal Railway Corporation under the heading of interest and ask you to explain the meaning of the discount item four hundred nine thousand two hundred dollars under the first heading. (Hands Mr. Abel the book.) A. The item of two million four hundred thousand dollars represents one per cent. per annum for six years on forty mil-



lion five per cent. notes sold on a six per cent. basis. The discount item four hundred nine thousand two hundred is the difference between the one per cent. payable semi-annually for a period of six years and paid in advance. In other words to reduce the amount two million four hundred thousand to present worth, which is one million nine hundred ninety thousand eight hundred.

Q. In other words, the amount of one million nine hundred ninety thousand eight hundred dollars invested at what per cent. would produce the four hundred thousand dollars, is that the way you get at that? A. No, it is the difference between getting two million four hundred thousand dollars and getting the amount piecemeal at the rate of so much per annum.

Q. At what rate of interest is that discount computed? A. Five per cent.

Q. Five per cent., and what are the other discounts in the several items less the three per cent. on balances, what does that mean in those next two items? A. The next item on the bill is one of five hundred thousand dollars which represents the interest accrued at five per cent. on forty million dollars for a period of three months, October 1, to December 31, 1912, less interest on the proceeds of the notes remaining with the bankers which amounts to two hundred eighty-seven thousand three hundred eighty. The next item represents interest on forty million five per cent. notes, January 1, 1913, to March 31, 1913, less interest on balances two hundred forty-one thousand two hundred fifteen dollars seventy-three cents. The next, December 31, 1913, to March 19, 1913, or rather to January 1, 1913, represents an amount borrowed to pay the January first coupon. All chargeable pursuant to the agreement of January, 1912, between the Brooklyn Rapid Transit Company and the New York Railway Corporation.

Q. Are you at present participating in any way - Were you pre-cent at the meeting on June 30, 1913, at which the Public Service Commission approved of this bill? A. I was.

Q. And you are familiar with the resolution of approval on the part of the Commission? A. Yes, sir.

Q. I find in that resolution the following: "Resolved that the said item of two million three hundred ninety-eight thousand two hundred ninety-eight dollars twenty-nine cents, being the amount

incurred by the Brooklyn Rapid Transit Company in behalf of the New York Municipal Railway Corporation as set forth in the above bill—referring to your bill—of the Brooklyn Rapid Transit hereby is deemed to be interest actually and necessarily paid or accrued on moneys paid by the New York Municipal Railway Corporation or on its behalf from time to time prior to March 19, 1913, within the term interest as the same is defined in subdivision 7, paragraph 14, and subdivision 6 of paragraph 15, of contract between the city of New York by the Public Service Commission for the First District with the New York Municipal Railway Corporation.”

Now, do you know whether there was any opposition from any source to this allowance in the bill of interest or any of the items of that bill, that resulted in this resolution? A. Yes, sir.

Q. And from what source was that opposition? A. As I remember the circumstances, Dr. Webber representing the Public Service Commission, criticised the inclusion of this amount.

Q. Do you mean the first item of the million nine hundred ninety thousand? A. Yes, sir. At one time for the reason that he feared that some part of the lines would go into operation before July 1, 1918, and in which event the operator would be permitted, under the terms of the contract to deduct six per cent. interest in respect thereto, while the New York Municipal Railway Corporation would be paying but five per cent. to its bond holders. And inasmuch as the contract provides that no profit can be made out of this transaction it was stipulated that as to any lines going into operation, in respect to which six per cent. was allowed to the operator, one per cent. of that six per cent. was to come back as a credit to construction. That is the object of that resolution. If it hadn't been taken care of at that time under the terms of the October 1, 1912 contract, the Brooklyn Rapid Transit Company would have had to go out and borrow money and pay six per cent. interest on it with a lot of money lying idle in the bank at three.

Q. They did that anyway did they not? A. No, they didn't.

Q. Why, hadn't the Brooklyn Rapid Transit Company borrowed forty millions of dollars against its notes on October 1? A. Yes, sir, I am talking about this particular transaction when they had

that money in the bank drawing three per cent. interest. It was folly to prolong the agony and pay six per cent. for money.

Senator Thompson.— You do pay six per cent.? A. I mean six per cent. on this amount that they pay to the bankers.

You borrowed that? A. Very glad to get the money. It was borrowed in the presidential year and we were very glad to get it.

Senator Thompson.— I am beginning to feel sorry for the bankers down here myself. I think that the rate of interest ought to be raised.

Mr. Moss.— Well, there are some people willing to raise it.

Senator Thompson.— Honestly I am sorry for these bankers down here. You put your money in the bank and you pay them a dollar a month for carrying your account and everybody else is sorry for them because there is any in the bank and I feel sorry the same way. A. Well, that is the way you have to watch the balances.

Q. (By Mr. Shuster.) Did Dr. Webber at that time, to your knowledge or at any time, criticise this item for the reason that it was a discount? A. I don't know that he did.

Q. Well, did any of the other officers or employees of the Commission criticise this item as a discount? A. The real criticism, beyond what I have stated, was that they didn't want to give the money all at once. They wanted to take the amount in piecemeal, that is, as it would have been paid out.

Q. Here is a memorandum we find in the files. It is a memorandum prepared for Mr. Craven by his first Assistant, Mr. Turner, and it is in reference to a memorandum prepared by Mr. Harkness from which I will also read, but I will read this, "Mr. Harkness in his memorandum refers to my urging that prepaid interest is nothing more or less than discount and that the contract prohibits allowance for discount in excess of three per cent. of cost. I only wish to say in reference to this matter that I understood perfectly from Mr. Harkness' explanation to me that the conferees had full cognizance of the fact that the Brooklyn Rapid Transit Company's financial plan included the use of five per cent. notes on the six per cent. basis and that the company intended

to charge up six per cent. interest during construction, although, this question was before the conferees had understood by them, as I understood the contract, and I believe Mr. Harkness agreed with me the contract did not clearly provide the payment of these prepaid interest items, which is clearly a discount of three per cent. My only purpose of objecting to the program which we followed was to make the records show a consistent disposal of the matter. You were not a party to the conferences. The instrument for your guidance in your determination was the contract and if the contract did not clearly stipulate that such prepaid interest was to be allowed, I thought it proper that you should make a determination which excluded it and permit the company to appeal and thereby allow the matter to be decided upon its merits by the Commission with full knowledge of the facts." Now, he clearly takes the position that this prepaid interest, so-called, is a discount. Now, Mr. Harkness' memorandum to which he refers and which was likewise prepared for the Chief Engineer is as follows: There are preliminary matters here simply referring to the occasion for this letter. "The contract of March 19, 1913, with the New York Municipal Railway Corporation provides for including in cost interest paid or incurred by or on behalf of that corporation prior to the date of the contract. The contract also provides including discount, but the discount allowance is restricted to three per cent. of cost. In financing the enterprise the Brooklyn Rapid Transit issued on account of the New York Municipal Railway Corporation its notes bearing interest at five per cent. but sold on the six per cent. basis. That is the bankers deducted from the purchase price of the notes a prepaid amount equal to one per cent. during the life of the notes which was equivalent to selling them at about ninety-five and a half. The amount of this prepayment that the company wishes charged up to cost and it is this that is included in the commission resolution and in one of your letters of June 30, as Mr. Turner urged in discussing the matter with you, prepaid interest is nothing more or less than discount and the contract prohibits an allowance of discount in excess of three per cent. of cost. That is technically correct, but throughout the negotiations leading up to the signing of the contract we were rather thoroughly acquainted with the Brooklyn Rapid Transit finance

plans and knew that its arrangement was to issue five per cent. notes on a six per cent. basis and that the company intended to charge up six per cent. interest during construction. To this no objection was made by those acting for the city and in effect this arrangement is recognized in the contract as the amount to be deducted from the company's profits to reimburse costs because of provision of the company's money so far in advance was computed upon that basis. This was so thoroughly understood that an attempt to stand upon the literal text of the contract in opposition to the real understanding would, it seems to me, constitute a breach of faith." He also then refers to Dr. Webber's opposition which you have referred to. Now this question evidently was before the Commission and before the Chief Engineer and it was held to be discount, conceded to be discount, at least technically, by the counsel to the Commission. It was the duty of the Engineer to determine there as to the propriety of the allowance under your contract and not the province of the Public Service Commission to absolve him from his duty and direct him to allow this and define it as interest. Is not that true? A. I don't know anything about the duty of the Commission. I know what the contract provides for. I know that that interest charge comes within the scope of the contract. You may have a version as to what it means as Mr. Harkness might have a version, but lawyers are often wrong on financial matters.

Senator Thompson.— If financial people would confine themselves to the good old fashioned rule of three, they and lawyers wouldn't disagree very much, would they? A. I think when they draw an instrument they ought to draw them so anyone could read them.

Senator Thompson.— Well, that isn't the style down here at all. You *can* read them. If you make a contract down here like a letter now, its perfectly possible for President Shonts of the Interborough and President Williams of the Brooklyn Rapid Transit to sit down and write a letter involving a transaction of millions of dollars and they will put it in typewritten sheets of ordinary letter paper and it will be perfectly understandable but just the minute those people turn it over to the lawyers and engineers

it covers two or three printed volumes and there can't anybody understand it, isn't that right? (Laughter.)

This interest you have gotten about ninety-four dollars out of every hundred dollars, as I understand you.

Mr. Shuster.— They didn't get that much.

Senator Thompson.— That means five and a fraction per cent. each year, which is the amount that was to be paid each year on the money that they gave. A. We pay five per cent. on the face of the note.

Senator Thompson.— That is, five dollars on a hundred dollars. Now, that five dollars makes five and a fraction per cent. Now that they figure by finance, that means six per cent. The way is they take it and say, "I am going to get one per cent. next year and one in two and three and four and five and I am going to figure the present worth of each one of those payments of one per cent. interest." A. Exactly!

Senator Thompson.— And so that reduces the amount. And apply that process to an ordinary six per cent. loan, why, you are paying seven per cent. instead of six per cent. to draw the present worth of it, isn't that so? A. No, you can figure it any way you want to, there is simply six per cent. charged during the period of construction and six per cent. charged during the period of operation.

Mr. Moss.— The contract permits something to be done, at least by this interpretation of it, that the common —

Senator Thompson.— Well, they put up ninety-one dollars and some cents. That is all there is to the transaction.

Mr. Moss.— But what citizen would understand that by reading the contract?

Mr. Shuster.— The contract calls for ninety-seven dollars.

Senator Thompson.— You put up over ninety-five dollars on the notes. How much did you get for a one hundred dollar note? A. Ninety-five dollars and three cents.

Senator Thompson.— I was right in the first place.

Mr. Shuster.— That was on your first transaction. When they put that from the left pocket into the right pocket and exchange bonds for notes, they get an additional cost which runs it down to ninety-one dollars and three quarters.

Senator Thompson.— Lets simplify this transaction much more. Put ourselves in the position of the man that has got to pay the money. You have got to go through the Railroad, and through the bank and you have to go through the subsidiary bank and finally find the fellow that is putting up the money. Now, he puts up ninety-four dollars and three cents and that is all he does. He turns over ninety-four dollars and three cents and each year thereafter he received five dollars. Now, that is all there is to that as far as that is concerned. A. So far as the note transaction is concerned, yes.

Senator Thompson.— And still you think and say that that is a six per cent. transaction? A. It nets them six per cent.

Senator Thompson.— He gets five dollars on one hundred dollars. I have to figure these out myself.

Mr. Shuster.— Can you give us any reason why the Public Service Commission passed upon this determination instead of resorting to the method provided for in the contract? A. I don't know but what they did resort to the method provided in the contract.

Q. If you don't know that, why then, probably you are the wrong witness to ask the question. You are familiar with the provisions of the contract with regard to the terminations? A. Yes, sir.

Senator Thompson.— I want to read this letter:

*" June 13, 1916.*

" Hon. George F. Thompson,  
" Chairman Legislative Investigating Committee,  
" Municipal Building, New York City.

" Dear Sir:

" After the assurance you gave our committee yesterday, that you would assist us in bringing out the true facts con-

cerning the Police wire-tapping methods, we have decided to request you to invite Acting Police Commissioner Leon G. Godley to meet us in open session before you and your Committee.

"We would therefore respectfully request that you ask Mr. Godley to appear before your Committee on Wednesday, June 14th, at 3:30 or 4 P. M., to the end that he may advise us as to what information the Police Department had which lead them to believe it was necessary to tap the wires of certain of our Unions, and also give the names of the criminals they sought.

"We would be glad to have him publicly tell us what crimes the department has prevented by listening on our wires. We are anxious to assist him if he will meet us on a common ground, and hope you will grant us our request to meet you and the Commissioner tomorrow.

"Yours very truly,

"PETER J. BRADY."

In as much as the people whose wires were tapped are represented by Mr. Brady and they are willing to have this done in reference to those cases, why, we don't see any reason why the Committee should grant the request. I don't see, how with all the other matters, we can take it up this afternoon, Mr. Brady.

Mr. Moss.— It says Wednesday.

Senator Thompson.— I would like to dispose of it in the morning.

Mr. Brady.— Just as you wish, Mr. Chairman. I would rather take it up in the afternoon.

Senator Thompson.— You ask Mr. Godley to come in the morning and we will take it up in the morning.

Mr. Brady.— About what time?

Senator Thompson.— Eleven o'clock.

Q. (By Mr. Shuster.) At the time that the New York Municipal delivered its bond to the Brooklyn Rapid Transit, what was



the form or method of turning over the money to the New York Municipal? A. The bonds were delivered at the office of the Central Trust Company and the proceeds of the Brooklyn Rapid Transit notes plus the necessary sum to equal ninety-seven per cent. of the face of the bonds was provided by the Brooklyn Rapid Transit and turned over to the Central Trust Company to be held in trust pursuant to the terms of the New York Municipal Mortgage.

Q. So that it was a matter of transfer on the books of the Trust Company of those bonds? A. No, sir, checks were actually passed.

Q. And those checks are in the possession of the Brooklyn Rapid Transit Company, I should take it, or the Central Trust Company, which? A. I really don't know whether they are in the possession of the Treasurer of the Brooklyn Rapid Transit or in the hands of the Central Trust Company. The checks drawn by the Central Trust Company on their own account would be in its custody and the checks by the Brooklyn Rapid Transit on the banker would be in its possession.

Q. Those are all available? A. Yes, sir.

Q. If it is not too much trouble, we would like to have them. A. All right, sir.

Q. Has all of those funds been expended by the New York Municipal, as yet? A. No, sir.

Q. Do you know what, approximately how much has been expended of the sixty millions? A. Why, roughly forty millions.

Q. Has the New York Municipal been receiving interest on the balance? A. Yes, sir, three per cent.

Q. Those funds are all on deposit with the Central Trust? A. No, sir.

Q. What banks? A. Central Trust Company, Kuhn-Loeb Company, and Kidder-Peabody and Company of Boston.

Q. Are those funds subject to check for any amount at any time or is there some specifications as to the amount and times that they may be drawn out? A. Those funds are subject to draft for the purposes provided in the mortgage.

Q. Are you required to have the termination before you can draw the funds? A. No, sir, but we are required to have the terminations as provided by the contract, and any amounts the en-

ginger does not include in his determination must be restored to the trustee.

Q. Now, Mr. Stover, of the Corporation Counsel's office suggests that we direct your attention to the definition of debt discount and expense in the contract and I will so read. This is subsection sixteen of fourteen:

"The words debt discount and expense to mean the actual and necessary expense including discounts, involved in the issue and disposal of securities to provide means for construction or equipment or for the reconstruction of existing railroads for initial operation or for additions, deducting therefrom any premiums received by or on behalf of the lessee upon or in connection with the disposal of such securities."

Keeping that definition in mind, Mr. Abel, are you still prepared to say that this first item in the bill of March 19, 1913, rendered by the Brooklyn Rapid Transit Company to the New York Municipal Railway Corporation as approved by the Public Service Commission, is interest? A. Yes, sir.

Q. Was it not an expense involved in the issue and disposal of the securities? A. It is prepaid interest on moneys borrowed in behalf of the lessee.

Q. Now, you can answer that question by "Yes" or "No," and I shall insist upon your doing so. A. No. It is not an expense item.

Q. I didn't ask you if it was an expense item. I will repeat the question again.

Is the item of one million nine hundred ninety thousand eight hundred dollars in this bill an item for an expense involved in the issue and disposal of the securities to provide means for the construction or equipment under contract No. 4? A. My answer is no.

Q. Then what was it? A. Interest.

Q. Interest? A. Yes, sir. There are two provisions in the contract, one for debt discount and expense and one for interest.

Q. Well, what would you concede here to be an expense involved in the issue and disposal of securities? A. Why, the cost of certifying bonds for instance.

Q. What would that have to do with the disposal of bonds? A. You can't sell a bond until it has been certified.

Q. Well, the word disposal includes the word certify, does it not? A. I presume the word does.

Q. And this definition includes something more than the ordinary costs of recording mortgages and drafting mortgages and putting revenue stamps on them. A. The preparation of the mortgage, I suppose.

Q. Well, wouldn't it include the cost of sale? Any expense incidental to the sale as well as the issue would be included? Now, all these other minor items that you have mentioned are incidental to the issue of a security. A. Those are such items that usually go into debt discount and expense.

Q. And they are all incidental to the issue of securities, are they not? And they are not necessarily incidental to the disposal of those securities? are they? A. They are preliminary.

Q. To the issue and disposal? "Disposal" here means the sale, the converting of your securities into cash. A. Yes.

Q. And what you pay over and above such an interest is such an expense? A. No, sir.

Q. You mean to say that isn't the intent of this provision of the contract? A. I mean to say that that debt discount and expense item is intended to cover all such incidentals and any discount which may be authorized by the Public Service Commission under the New York Consolidated's own bonds. The provision of interest provides for the Brooklyn Rapid Transit situation where they are acting as advance agents for the New York Municipal and have gone out and borrowed money for its account pursuant to a contract.

Senator Thompson.—Wheat banker do you borrow this money from? A. We borrowed the money from the Central Trust Company, Kidder-Peabody & Company and Kuhn-Loeb & Company.

Senator Thompson.—Any of the Brooklyn Rapid Transit got any stock in those institutions. A. Not to my knowledge.

Senator Thompson.—Any of the Brooklyn Rapid Transit organize a party? They organized everything else over there. A.

I don't suppose the Brooklyn Rapid Transit was particular where they went as long as they got the sixty million dollars.

Senator Thompson.— You have got nineteen companies to run everything but a bank. Why didn't you do that right off the bat? I think that is an oversight Colonel Williams.

Colonel Williams.— I never knew that just by opening a bank you could get money.

Senator Thompson.— Going by some of the bankers I have met that must be so. I don't particularly mean New York bankers.

Q. (By Mr. Stover.) Do you think that under the terms of the contract you could have charged as discount the difference between the face value of the notes and the sum that you received upon that sale? A. No.

Q. Why not? A. We are permitted under the contract to charge discount up to an amount of three per cent.

Q. Yes, up to three per cent., could you not have made such a charge? A. You could if you had wanted to, yes.

Q. But wouldn't you necessarily have to under that definition? A. No, sir.

Q. What does this mean then: "The actual and necessary expense including discounts?" (By Mr. Shuster.) A. It means that we shall not sell the long term bonds for less than ninety-seven. We were selling the short term notes on the ninety-six per cent. basis. That is what it means.

Q. Where do you read any such in this contract here? A. Well, it was known by the contract.

Senator Thompson.— Well, you have to construe the contract by what is in the contract, don't you? A. Yes, we do.

Why, Senator, to construe it the way Mr. Shuster is now reasoning would simply mean that under the terms of the subway contract we would be permitted to charge five per cent. during the construction period when we are permitted to charge six per cent. during the operating period. It is absurd.

Senator Thompson.— That simply means it would mean that you couldn't do this? A. No, but the definition of interest covers

the situation as to money borrowed in behalf of the lessee, that is the New York Municipal Railway Corporation.

Q. (By Mr. Shuster.) Well, now let us see what it covers. I have been handed by Colonel Williams what purports to be a memorandum of the proposal submitted to Commissioners Wilcox, Eustis and Williams by Mr. Albert Rathbone, who is counsel of the Central Trust Company.

“ It is proposed that a new corporation be organized (hereinafter termed the Subway Company) which will enter into the proposed contract with the City for the lease and operation of the new subways and elevated lines (with certain existing elevated and former steam railroad lines) to be allotted to the Brooklyn Rapid Transit interests.

“ The Subway Company will create an issue of its 5 per cent. bonds running for approximately the term equal to the proposed lease from the City. The amount of these bonds is to be sufficient to cover the probable requirements of the contract with the City, including extensions; the amount to be presently issued at the outset shall not exceed \$60,000,000. Said bonds are to have a sinking fund sufficient to provide for their retirement at or before maturity and such sinking fund must be applied to the purchase of outstanding bonds at their market value not exceeding 107  $\frac{1}{2}$ , or to their redemption at that price. The entire issue of the bonds (but not a part thereof, except through the operation of the sinking fund) is to be subject to retirement on any semi-annual interest day at 107  $\frac{1}{2}$  and accrued interest. The mortgage securing said bonds will be a first lien upon all property, present or future, of the Subway Company, including the lease from the City and all rights of the operator thereunder.

“ The Brooklyn Union Elevated Railroad Company will, through the transfer to it of the lease from the City to the Subway Company, be the actual operator of the new subways, and elevated lines, contributing to the system the existing lines referred to in the offer of the Brooklyn Rapid Transit Railroad Company.

“ The Brooklyn Union Company will acquire and own

the stock of the Subway Company, and will guarantee, assume and agree to pay the bonds of the Subway Company securing such guaranty by a mortgage upon all its property.

"It may be that the Brooklyn Union Elevated Railroad Company, the Canarsie Railroad Company and the Sea Beach Railway Company will be consolidated, in which event the Consolidated Company thus formed will take the place of the Brooklyn Union Elevated Railroad Company in the transactions above outlined.

"After setting forth the proposal to organize a new corporation, the Subway Company, which ultimately became the New York Municipal and proposing that it issue sixty millions of bonds and the Brooklyn Union Elevated Railroad Company operate the new subway and acquire and own stock of the subway company, we then come to this provision:

"So as to make use of the established credit and free assets of the Brooklyn Rapid Transit Company in providing the money to be contributed toward the construction and equipment of the new lines, the Brooklyn Rapid Transit Company will purchase from the Subway Company at 97 and accrued interest \$40,000,000 of the Subway Company bonds, (with an option at the same price for \$20,000,000 additional of said bonds). The Brooklyn Rapid Transit Company will then assume and agree to pay the bonds of the Subway Company so acquired by it, and will pledge the same with other of its treasury assets to secure an issue of its six year notes, of the aggregate amount of \$60,000,000. \$40,000,000 of these notes will be immediately sold to bankers on a 6 per cent. basis with 1 per cent. commission, and an option will be given to the bankers to acquire the additional \$20,000,000 of notes (or such portion thereof as may be issued) at the same price."

That plainly contemplates the acquisition of bonds at ninety-seven and no less. A. Yes, sir.

Q. We there still have ninety-seven. A. That is all right for the bonds.

Q. And no less for the bonds.

I will read on:

“As part of the purchase of the notes the bankers will be given an option by the Brooklyn Rapid Transit Company to acquire at 97 and accrued interest bonds of the Subway Company not exceeding \$60,000,000 in amount.”

We again still have ninety-seven. A. Yes, for the bonds.

Q. Now, reading further: “The contract between the Subway Company and the Brooklyn Rapid Transit Company above referred to for the purchase by the latter of the bonds of the Subway Company will provide that any profit from the transaction made by the Brooklyn Rapid Transit Company will be repaid to the Subway Company and that any loss suffered by the Brooklyn Rapid Transit Company will be repaid by the Subway Company as excess interest, during the period of construction, provided that such excess interest added to the interest payable on the bonds of the Subway Company acquired by the Brooklyn Rapid Transit Company shall not aggregate a greater sum than will be equivalent to an average rate of 6 per cent. per annum during the six year construction period plus 1 per cent. commission upon the face value of bonds thus sold and delivered by the Subway Company.

“Through this operation the bonds of the Subway Company will be sold at 97, and the Subway Company during the six year period of construction will pay interest at a rate not exceeding 6.21 per cent. When the interest to be allowed on the proceeds of the sale of bonds, until expended, namely 3 per cent. per annum, is considered, the actual cost to the Subway Company of its money during construction will be considerably reduced.”

Now, this clearly was intended to arbitrarily define as interest even the losses sustained in the sale of their bonds. A. It was designed to make —

Q. Isn't that what that reads? A. It was designed to make the Brooklyn Rapid Transit Company the Agent throughout this transaction.

Q. What do they mean here?

Senator Thompson.—You can make all the explanations you

want to but don't forget to answer the question. A. I presume he read the letter. I don't care to amplify.

Q. Now, this is handed to us by Colonel Williams and is probably evidence to establish your right as interest to this discount.

• • • A. Well now, I should say that means that the excess interest or any loss entailed in the purchase or sale of the Municipal bonds would be considered as excess interest.

Q. Now, that is what you are trying to accomplish, at least temporarily, by this determination? A. That has nothing whatever to do with what we are talking about. You are talking about the bonds.

Q. This is so mixed up with bonds and notes that I don't know what I am talking about. A. I know and I will answer it.

The Public Service Commission fixed the price at which the bonds should be sold. We, afterward agreed with the New York Municipal. Bought them at ninety-seven, it would credit the profit of the transaction, the notes referred to in there as a six per cent. basis proposition. Now, it was the bankers' option to take a five per cent. note on a six per cent. basis instead of a six per cent. note at par. It was immaterial to us whether we sold a six per cent. note at par or a five per cent. note on a six per cent. basis. This question would never have arisen with you. The net results, so far as the city is concerned, is the same. The net results, so far as we are concerned, are the same. We knew that the language of the contract fully covers it.

Mr. Yeomans.— Wouldn't this have the same results, Mr. Shuster, if we had sold the six per cent. note?

Mr. Shuster.— There would then have been no conflict between your actions and your words.

You drew a contract here that, so far as the Public was concerned, seemed to limit the cost of your money to three per cent. discount instead of that, the actual transaction by the method pursued, makes your money cost you eight and a quarter per cent. A. (By Mr. Abel.) That was all understood during the negotiations and when the matter came up.



Q. Well, then why was it not put into the contract? A. It was put in this language.

Senator Thompson.— Why wasn't it put in any language so the public could understand it?

Mr. Yeomans.— It was put in under an agreement Senator.

The city was in the same position as we were excepting that the city wasn't limited to any six per cent. or any period and as a consequence the city went back and charged several million dollars to interest and that is what it was put in for. It was put in to cover money provided for either of us.

Senator Thompson.— I agree with you, you understood it, the city officials understood it and the Public Service representatives understood it. Why in the world didn't you put it in the contract so we could all understand it? That is the whole trouble with the whole contract. It is complicated and carried out in voluminous books, but the public certainly didn't understand it and I can't conceive of a public that if it did understand that that would ever permit it to go through.

Mr. Yeomans.— When we came to the interpretation of it Mr. Maltbie, who was posted on the contract and Mr. Turner, whom Mr. Shuster has referred to, were there and this resolution was drawn, as I remember it, or changed by Mr. Maltbie in order the engineer who finally had to determine might have their information as to what it meant.

Senator Thompson.— Mr. Maltbie and Mr. Mitchell did not vote for it.

Mr. Stover.— It was their construction of the proposition.

Was there any item in this determination of March the 19th, 1913, allowed under paragraph 16 of the contract which relates to debt discount and expense? A. No, sir, it is all interest.

Q. (By Mr. Stover.) All allowances in that determination were made under paragraph six under the cost of construction relating to interest? A. For reconstruction of existing roads it is distributed.

Q. All allowed as interest, nothing allowed as discount? A. Yes, sir.

Senator Thompson.— You took the three per cent. discount provided in the contract just the same? A. Yes.

Senator Thompson.— You got it whatever it related to, you took the three per cent.? A. Under this contract we got six per cent. interest on the money provided and three per cent. discount which is to be included as a part by the engineer.

Senator Thompson.— At the same time the city was borrowing money at four and a half on a premium of one hundred and one.

Q. (By Mr. Stover.) Well, did you get any discount allowed you at all in this determination? A. I don't think so.

Q. Nothing but interest? A. Well, that determination covers the period in the dating March 19. The bonds of the New York Municipal were sold subsequently.

Senator Thompson.— The city also thought it was getting good rent for this subway when the entire rental was a sufficient amount for amortization and was considered to be ample at five and a half per cent. A. Well, in selling the sixty million New York Municipal bonds on the five per cent. basis except the three per cent. basis, we are permitted six per cent. allowance under the contract and one per cent. to use for amortization, which goes to the city. Now, the city on its part, borrows plus a sinking fund of one per cent. and we don't participate in the accretion of that amortization.

Senator Thompson.— Where they pay the city five and a half in which they must find included the amortization fund and when they loan money they have got to have six besides the amortization fund.

Q. (By Mr. Shuster.) Did you pay these bankers anything? A. That is the one per cent. commission on the transaction.

Q. That is the brokerage? A. You can call it anything you want. We call it commission.

Senator Thompson.—They got that besides this one million nine hundred thousand odd dollars? A. They got notes on the six per cent. basis less one per cent. commission.

Q. Who got that one million nine hundred ninety thousand? A. Who got it, why the fellow that bought the notes got it.

Q. That's in the first instance. Now, when you say the fellow, you mean the banker? A. The banker.

Q. Who was that banker? A. The Central Trust Company, Kuhn-Loeb & Company and Kidder-Peabody & Company.

Q. And the ultimate owner did not get that money? A. I don't know what the owner paid for his notes.

Senator Thompson.—They got this million nine hundred thousand odd dollars and they got six hundred thousand dollars besides, is that right? A. It depends on what they sold the notes for as to what they got.

Q. Now, don't you know? A. How do I know what they got. I know what they paid.

Q. It goes to them and the door is shut? A. Hetty Green may have gotten it. I don't know.

Senator Thompson.—In addition you paid six hundred thousand dollars? A. We paid one per cent., six hundred thousand dollars. We gave the bankers a prepaid interest of one per cent. per annum so as to make the five per cent. notes pay six per cent.

Senator Thompson.—In addition to the one million nine hundred thousand or was it included?

Mr. Stover.—What is the difference between a prepaid interest and a discount?

Senator Thompson.—Well, that is a talking point.

Colonel Williams.—Mr. Chairman, the bankers formed a syndicate to sell these notes at 96.65. Now they got the difference between what they bought the notes for and what they sold them for.

Senator Thompson.—It depends on who they sold them to.

Colonel Williams.—They formed a syndicate.

Senator Thompson.— Well, you take four or five men over in Brooklyn and you organize yourselves and you call yourselves the Brooklyn Rapid Transit Company and then some afternoon when you haven't anything else to do you organize yourselves again and you call yourselves the New York Municipal and then you organize again and you call yourselves the New York Consolidated and you organized yourselves nineteen different times over there and it is you same people every time.

Mr. Moss.— Its some stock every time. You have got to pay your dividends on it.

Senator Thompson.— And you sue yourselves through each other and all that sort of thing and when you get all through you have got the same gentlemen. The bank starts as a bank and then it organizes itself into a syndicate and then it organizes into a public service corporation to which the syndicate disposes of that property.

Mr. Moss.— I think you left out one or two Senator.

Q. Did Mr. Brady get any of this? A. (By Mr. Abel.) I don't know whether Mr. Brady was dead or alive at the time.

Q. (By Mr. Shuster.) Going back now, directing your attention to the debt discount and expense proposition, you did sell the bonds to the New York Municipal Railway Corporation? It did sell its bonds at a discount of three per cent. A. Yes, sir, ninety-seven.

Q. And that would on forty million amount to one million two hundred thousand dollars and on the last twenty million would amount to six hundred thousand dollars. Now, in what way have you disposed of those two items of discount on the books of your Corporation? A. To the extent to which the Chief Engineer has included that item in his determination, to that extent it has transferred the cost of construction. The balance remains as an amortized amount.

Q. Can you tell me what proportion has been put into the determination? A. No, I can't offhand.

Q. (Are you aware that your books.)

The Corporation counsel wants to know if you are going to

put in another bill for this discount. A. We put in a bill for any moneys that the Brooklyn Rapid Transit defrays in behalf of the New York Municipal under its 1912 contract, whatever it is.

Q. (By Mr. Stover.) Do you contemplate making an additional charge? A. We don't contemplate doing anything that the contract does not provide.

Q. (By Mr. Shuster.) Price, Waterhouse & Company testified at your instance in reply to a subpoena of this Committee. I find this question:

"Q. When selling company bonds at different times since January 1st, 1908 to date, state names of account or accounts to which the difference between par and the amount realized from the sale of same was charged, also state what bookkeeping accounts were set up by you.

"A. Discount three per cent. on forty-million bonds sold in April, 1913. Was charged originally to debt discount and interest, one million two hundred thousand dollars."

That was your three per cent. on the first forty million? A. Yes.

Q. And that was in accordance with this distribution provided for in the contract, was it not? A. Are you talking about bonds now?

Q. Yes. A. Yes, sir.

Q. From here the amount was transferred successively to first suspense and the debt discount suspense the amount of one million two hundred thousand dollars remaining intact throughout. And so that apparently one hundred thirteen thousand of this one million twenty-two hundred thousand dollars has already been determined by the engineer in your first quarterly determination? A. Probably.

Q. Now what took place that this one hundred thousand came back? A. I think that was done because the Public Service Commission instituted the system of appropriations or job orders to which to charge all these items and they wanted to keep all these discount items together until the entire project was completed and then they could be distributed. I think the engineer feared that

if we made the distribution as we went along some of the lines would take longer to construct than others and to avoid two or three refinements he desired to have the whole thing carried under one heading.

Q. Does that mean that after he had made a determination he reconsidered and withdrew it? A. No. It means that so far as the appropriation numbers are concerned he wanted all the elements of interest kept together and all the elements of construction kept together. It hasn't anything to do with the inclusion or exclusion from the determination.

Q. Now, a discount of three per cent. on the twenty million bonds sold in November, 1915, it says, "See the answer to question two," which I read above was charged originally to debt discount and expense, six hundred thousand dollars. It makes a total of one million eight hundred thousand dollars charged to debt discount and expense, which will ultimately be distributed and allowed as the work progresses? A. Yes, sir.

Q. And that is in addition to the amounts allowed in this interest? A. Yes, sir.

Q. And no part of that discount of three per cent. is included in this bill? A. Not in that bill for interest, no.

Q. But you will be entitled ultimately to have this all charged in the construction and credited to your contribution under the contract? A. Yes, sir. When that contribution is referred to under the terms of the contract, we contribute thirteen and a half million dollars plus the Broadway line, but it will be included in the cost of construction and equipment under the contract.

Colonel Williams.—In reading from that memorandum that was filed with the Public Service Commission in June, 1912,

Q. Mr. Abel has said so. A. No, Mr. Abel didn't say that. by Mr. Rathbone, you read a paragraph there and put the question to the effect that if the Brooklyn Rapid Transit Company, having bought the New York Municipal bonds to sell them for less than ninety-seven it could charge back the deficiency below ninety-seven to the New York Municipal, which was in effect making an additional discount on the New York Municipal bonds. That isn't true. The contract itself, if you will look at it limits

the charge that the Brooklyn Rapid Transit can make the expenses, interest and commission, and that again is limited to six per cent. upon the amount of the New York Municipal bonds carrying out the original intention. If the Brooklyn Rapid Transit should have to sell these New York Municipal bonds for less than ninety-seven it has got to make up the difference out of its own resources.

Q. (By Mr. Shuster.) Do they in turn charge it against the New York Municipal? A. Oh! no.

Mr. Abel said it was excess interest that has been charged to the New York Municipal but the bonds themselves have not been sold.

Q. Well, that excess interest is nothing more or less than discount addition over the fixed rate of interest. A. The New York bankers had chosen to put out a six per cent. note instead of a five per cent. note.

Q. You can see that? A. (By Colonel Williams.) And that is exactly the same effect and if you will read all the literature pertaining to the contract, the language of the contract itself there bears out this understanding.

Mr. Shuster.—I concede that you succeeded in doing a six per cent. stunt on five per cent. paper. But, as dealing with the public, your contract is not candid and is not square with the result.

Colonel Williams.—Then you have not brought out the other condition, namely, if your theory is correct, this was a discount, we are doing something which we are not called upon to do by the terms of the contract. More than that, you will have to take into consideration that other clause in the contract which you have probably overlooked whereby we had forty million dollars raised in advance. The city conferees advised us to put thirteen thousand four hundred dollars.

Q. I haven't overlooked that. That thirteen thousand and five hundred dollars comes out of your revenue and has nothing to do with your capital.

Colonel Williams.—Yes, it is, it must be.

Q. Unless it is earned it is never deducted.

Colonel Williams.— Oh! no, but if it is earned it is deducted.

Q. I still believe that you could well afford to have that little rider to save the face of the Commission in order to get through your discount.

Colonel Williams.— Well, you can, although the city with all its resources would have paid a larger rate of interest during construction on the moneys supplied than we would have.

Mr. Shuster.— Well, that don't seem to square with the record so far.

Colonel Williams.— Well, they have already spent between eight and ten millions and they have got about eight or nine more to spend.

Mr. Shuster.— They have?

Colonel Williams.— Yes, sir.

Mr. Shuster.— How much of that is due to delay in operation in getting the work completed?

Colonel Williams.— A large part of it.

Mr. Shuster.— That has nothing to do with getting the cause of waste?

Colonel Williams.— Just as much. Mr. Shuster, the city had already paid about four and a half millions of interest before March 19, 1913, and they have charged it against the taxpayers and they turned around after this agreement went into effect and they got the advantage of this language and paid a dividend to the taxpayers.

Mr. Shuster.— Out of what? Out of borrowed money?

Senator Thompson.— I wish, Mr. Moss, you would subpoena a taxpayer and see if he ever received a dividend.

Mr. Shuster.— Well, we are not very strong defenders for the city in this proposition.



Mr. Moss.— Well, I am sure they will all feel better, now, they have learned that.

Mr. Shuster.— They borrowed money to pay dividends on?

Senator Thompson.— Colonel Williams has a letter he wants to have read.

Colonel Williams.— That clarifies the situation as to our state of mind at that time.

Mr. Shuster.— Your contract was not consummated until 1913, in March, and practically all this transaction which you were allowed the so-called prepayment of interest was a transaction had with the bankers and the Brooklyn Rapid Transit Company and in which the New York Municipal Railway Corporation could at that time have had no interests for it was not even in existence.

Colonel Williams.— Oh, yes, the New York Municipal was created September 27, 1912.

Mr. Shuster.— And this negotiation with the bankers was in July, 1912.

Well, what would have happened, Colonel, had you never concluded the contract?

Colonel Williams.— Well, we wouldn't have had to take the money.

Mr. Shuster.— Now let us understand you, you say you didn't have the money on October 1, 1912.

Then why are you demanding interest?

Colonel Williams.— We had the money on October 1, 1912. We had a contract with the bankers on June 10, 1912.

Mr. Shuster.— But you had no contract with the city for six months.

Colonel Williams.— No, having taken the money in October, 1912, of course, we were liable to the bankers for it and we would have been out of the commission for that amount of capital.

Mr. Yeomans.— You know, Mr. Shuster, the one per cent. commission was never charged.

Mr. Shuster.— No, that one per cent. commission as it appeared the other day, you are seeking to capitalize the stock. They are going to pay the bankers six hundred thousand dollars.

Senator Thompson.— How does that come?

Mr. Shuster.— Is it not a fact that you undertook and did include in your first bill for the prior determination, the commission which was paid the bankers?

Colonel Williams.— I think the Commission asked us for a statement of all our expenditures, but I don't recall that that was ever included in any bill. I think we did submit a statement of expenditures and asked to be permitted to issue securities for the four hundred thousand dollars as well as for the bankers' counsel fees, but we never asked to have the four hundred thousand included as a part of the engineer's determination.

Mr. Shuster.— If there is no objection, Mr. Chairman, I will start to read this letter, at the request of Colonel Williams. If my voice breaks somebody else can finish it.

“ December 10, 1912.

“ Mr. Thomas E. Clark, President,

“ Committee of the Allied Civic Bodies of South Brooklyn,

“ 177 Montague Street,

“ Borough of Brooklyn, N. Y.

“ Dear Sir: I have your letter of yesterday's date. I do not wonder at your weariness over the delay in final consummation of the transit problem.

“ We supposed first that it was settled by the final resolution of the Board of Estimate on July 21, 1911, following months of controversy and conference. To show our good faith and at the request of the Public Service Commission we prepared within six weeks after that supposed final decision a form of contract carrying out the terms of the decision and submitted it to the Public Service Commission, following largely the previously published draft of their Tri-

borough contract. From the first week of September, 1911 (when that form of contract in printed shape was submitted to the Commission), we were able to get no serious consideration of its terms, and in the meanwhile, as you know, the whole transit question was revived again through the activities of the Pennsylvania Railroad Company. More months of parleying followed, including a new proposition from the Interborough Rapid Transit Company under date of February 27, 1912, and its prompt approval within two weeks thereafter by the Public Service Commission.

"The acceptance of this proposition involved a new arrangement with the Brooklyn Company. We acquiesced in a smaller measure of transit relief and opportunity than the City had voted previously to give us, and on May 24, 1912, the new dual system, specifically outlined as to terms and division of lines, was finally approved by the Board of Estimate, and again the Public Service Commission was requested to prepare contracts with each company for carrying out the arrangement. In the latter part of August we were furnished with a tentative draft of the contract intended for us with the request that we go over it and make any suggestions of changes which might appeal to us as necessary.

"We found that the contract, as submitted, instead of reflecting the terms of the report approved by the Board of Estimate on May 24th, contained many new and burdensome provisions, some of which had been considered in the preceding conferences and had been rejected, and these additions necessitated radical modifications. Nevertheless we put our whole time and energy upon the work, approaching the question with the broad spirit of harmonizing unessential differences, and within two weeks from the receipt of the tentative draft we transmitted in printed form to the Commission our suggested changes. Then followed conferences with the Commission, we yielding materially, they yielding somewhat, but up to the present day we have no information as to the Commission's conclusions on the language of any one of the hundreds of paragraphs in that contract.

"For this situation I do not feel that our company is in any respect to blame. We started out in this transit cam-

paign upon broad lines of policy; we have adhered to high standards of frankness and fair play in negotiations; we have made concession after concession in terms; relying upon the the good faith of the City we have shown our own good faith by providing in advance for two-thirds of the moneys needed under banking arrangements which have only been commended and nowhere criticised, and with the hope that having the money on hand we might push with all possible energy the work of construction and equipment; and to say that we are disappointed and discouraged that no operating contract is yet in hand is but feebly echoing your own sentiment of weariness.

“Because the Commission has not informd us of their conclusions as to any of the matters in controversy in the contract we cannot do more than guess at what the differences still existing are — that guess being based upon our interpretation of the attitude assumed in conferences by the various members of the Commission.”

Mr. Shuster.— This letter was written after you had made your banking arrangements, was it not?

Colonel Williams.— Yes.

“You refer, however, particularly to the question of interest, because this question is publicly reported as being the only serious question remaining unsettled, and as to this question I am glad to put our own case before yourself and associates. The matter involves the definition of the cost of construction, or the cost of equipment. Generally speaking, there is no difference of opinion in private or public practice or theory as to the proposition that interest paid during the progress of construction on moneys provided for construction is an element to be computed in the final cost of such construction. Every man who builds a house, every contractor, every manufacturer, every corporation, knows that the use of money during construction must be considered as part of the cost of construction, and if individual or corporation is prudent, and unless he or it has unlimited resources to be commended at any time, money for construction requirements will be

provided liberally in advance. The failure to make such provision is every day leading individuals and corporations into bankruptcy. The people of Brooklyn know that it was this failure which brought disaster upon the first attempts to give rapid transit to Brooklyn. You do not have to look far into your own territory of South Brooklyn to see many instances where buildings are incomplete or unoccupied because the builders have failed to provide themselves with sufficient funds, and construction has ceased or title has passed to mortgage creditors.

“ Now what did the report upon which the Board of Estimate and Apportionment based its resolution of May 24th last say as to this question of interest during construction? It defined the cost of construction, whether borne by the City or by the operating company, as including ‘ all carrying charges during construction ’ and it defined the cost of equipment to be furnished by the operating company as including ‘ all carrying charges on the cost of equipment prior to the operation thereof. ’ Broader language than this could not well have been chosen. Was there any question what it meant? If so, could there be any better interpretation than the definition embodied in a formal order of the Public Service Commission adopted on December 8, 1908, outlining the manner in which the accounts of the public service corporations should be kept? That definition is as follows:

“ ‘ *Interest during construction.*

“ ‘ Charge to this account the interest accrued upon all moneys (and credits available upon demand) acquired for use in connection with the construction and equipment of the property from the time of such acquisition until the construction is ready for use. Interest receivable accrued upon such moneys and credits shall be credited to this account. To this account shall also be credited discounts realized through prompt payment of bills for materials and supplies used in construction unless such discounts are credited to the particular bills.’

“ In view of this language there need not have been any reason for doubt as to its meaning, but in order that there

might be no misunderstanding and in order that the Public Service Commission (which would subsequently be called upon to approve our financial arrangement) might understand exactly what it involved, we submitted to the Commission on June 13, 1912, a memorandum outlining the whole program, including the initial provision for approximately \$40,000, 000 of money, and on the following day at a conference with the Commission over this memorandum and an elaboration of our plans, three out of the four commissioners present approved the program as therein laid down and informally authorized us to go ahead with it. Nevertheless we refrained from issuing our notes and taking the bankers' money as long as possible, namely, until October 1st last, feeling confident that by that time the operating contract with the City would be completed and executed.

"When the draft of that operating contract came to us in the latter part of August the language used in defining interest during construction might have been regarded as broad enough to cover the same practice which is embodied in the order of the Public Service Commission above quoted, and which we have always contended for, but in order that there might be no subsequent dispute or litigation over the language we proposed a modification which would leave no doubt but that interest would be allowed, not merely from the time when expenditures were made, but from the time when moneys for construction were provided, and subsequently counsel for the Commission accepted this amendment with the modification that there should be credited to such construction any interest receivable upon moneys thus provided. This we accepted and before issuing our notes and taking the money therefor from our bankers, we went over roughly with the Commission all the essential features of the contract and no objection was raised by any Commissioner to the language which we had submitted, as modified by counsel for the Commission. Not until about three or four weeks ago have we had the slightest intimation that such language was not acceptable to the Commission, and even up to the time of the present writing we do not know what language would be ac-

ceptable to the Commission, for they have submitted to us no alternative proposal.

“In the meanwhile through no fault of ours, following every business instinct of prudence, showing our good faith toward the City, meeting the very loud demand of the people for immediate beginning of construction, it is costing us approximately \$3,000 every day for having money on hand to discharge our obligations over and above the interest received on such money, and it is costing the joint enterprise very many thousands of dollars in addition by the increasing cost of materials, to say nothing of the cost to the public from the delay in transit relief, and unless the City allows us in the contract to follow the same rule of accounting which is embodied in its order above quoted, the result may be a penalty running into millions of dollars for undertaking in good faith, and upon these official assurances above referred to, our arrangement with the city. For it must be remembered that under the proposed contract we have no power to determine the rapidity with which our own money may be spent. Every plan, every contract, every voucher, every check (as the contract stood in August last) must first be approved by the Public Service Commission or its employees. Under these circumstances, how would any corporation dare to leave its financial credit so entirely at the mercy of public officials? The City does not hesitate to leave unused for years the Centre Street Loop, adding yearly interest of three or four hundred thousand dollars to its cost, and expect our system to pay interest upon that excessive cost; therefore, why should it hesitate when through no fault of ours construction may be delayed to allow to be charged to the cost of such construction the interest which we have to pay on the moneys provided therefor?

“From certain newspaper articles I should imagine that some people have the idea that this controversy is over a question of the City paying us interest on our moneys provided in advance. Of course there is no such question. The City does not pay us any interest on these moneys whatever. We pay the interest on the moneys and the only concern which it is to the City is as to whether that interest shall be added

to the cost. And whether it is added to the cost or not is of no financial concern of the City, except in two respects. First, that if the City takes the property over it may have to pay for the interest charged to construction as well as for other elements entering into construction, and second, that the amount upon which the company gets its preferential is increased by the amount of that interest charged. As to the first situation no question will arise if the City never takes over the property, and if it takes over the property the understanding from the beginning has been that the operator should not be penalized. As to the second situation, if the operator is willing to accept all the unnecessarily inflated cost to the City's construction, the City should not raise any question as to the comparatively small addition to the Lessee's cost by reason of this question of interest.

"Yours very truly,

"T. S. WILLIAMS,

"President."

Colonel Williams.—I am glad that you read it. I think you are the man that ought to read it.

Mr. Shuster.—I don't question the assertions here that this matter was entirely submitted as quoted.

Are you familiar with this question of prior determination?

Colonel Williams.—I have been, yes.

Mr. Shuster.—Have you seen this bill recently or would you recognize it if you saw your original bill?

Colonel Williams.—I think so, yes.

Mr. Shuster.—Now, as to that first item, what is your explanation of it?

Colonel Williams.—The same as Mr. Abel's.

Mr. Shuster.—Well, let us have it in your own language.

Colonel Williams.—The two million four hundred thousand dollar item is one per cent. for six years on forty million dollars,



face value of notes issued. From that two million four hundred thousand dollars is deducted four hundred thousand two hundred dollars in order to arrive at the present worth up to that date, namely, March 19, 1913, of two million four hundred thousand dollars, making one million nine hundred ninety thousand dollars.

Mr. Shuster.—Now then, in addition to that one per cent. interest you have also been allowed there up to March 19, 1913, for the interest accrued on the forty millions notes and bonds at five per cent., are you not?

Colonel Williams.—You are speaking of the Brooklyn Rapid Transit Company or the New York Municipal?

Mr. Shuster.—The Brooklyn Rapid Transit Company. You have got it in your bill there, and I suppose it all belongs to you.

Colonel Williams.—From October 1, 1912, to December 31, 1912, the interest paid on forty millions of notes was five hundred thousand dollars paid by the Brooklyn Rapid Transit.

Mr. Shuster.—Well, that is all of the interest whether at five or six per cent., that had accrued on the forty million dollars prior to March 19, 1913?

Colonel Williams.—That is the net amount after crediting the interest on the balances.

Mr. Shuster.—And that has now all gone into the cost of construction and equipment account, as the contract calls?

Colonel Williams.—Yes, sir.

Mr. Shuster.—I presume you agree with Mr. Abel that that is prepaid interest and not discount, that first item?

Colonel Williams.—I don't think there is any question of it.

Mr. Shuster.—Can you explain the difference or distinction between discount in that transaction and prepaid interest?

Colonel Williams.—Discount generally is a difference between

price at which securities are sold and the par value of the securities.

Mr. Shuster.—Yes, by the par value of the securities, you mean the face value?

Colonel Williams.—Yes.

Mr. Shuster.—And interest has no relation whatever to discount as you have described it?

Colonel Williams.—Not as I have described it, no.

Mr. Shuster.—Now your transaction in simple terms was, you took your notes to the bank and sold them. You took your five per cent. notes to the bank and sold them at a price equivalent to ninety-nine per cent. of their face value, isn't that in simple terms what really took place?

Colonel Williams.—Ninety-nine per cent.?

Mr. Shuster.—Yes, ninety-nine per cent. of their face value.

Colonel Williams.—Ninety-nine per cent.?

Mr. Shuster.—Yes.

Colonel Williams.—No.

Mr. Shuster.—What did you do?

Colonel Williams.—We sold our five per cent. notes to the bankers on a six per cent. basis which would have been something like ninety-five.

Mr. Shuster.—I meant ninety-five when I said ninety-nine.

Colonel Williams.—I see.

Mr. Shuster.—You took a hundred dollar note and you got ninety-five dollars for it, did you not?

Colonel Williams.—Around that.

Mr. Shuster.—Now, if that was some other transaction than that, if that was just a straight transaction of discounting, why they would have done it in the same way wouldn't they?

Colonel Williams.— They might but that wasn't that kind of a transaction.

Senator Thompson.— They wouldn't talk about it so much.

Colonel Williams.— They didn't discount our notes. They made a bargain with us to lend us money at six per cent. per annum. Now it was immaterial to us how they handled it.

Mr. Shuster.— Did they hold those notes as collateral until it was paid?

Colonel Williams.— They held the cash.

Mr. Shuster.— Did they give you interest on that cash?

Colonel Williams.— Oh, yes, three per cent.

Mr. Shuster.— So it was really a deposit, a relation of debtor and creditor arose between you and the bank?

Colonel Williams.— The bankers require that the moneys remain on deposit.

Mr. Shuster.— Well, if you didn't leave it there you would have to take it to some other bank.

Colonel Williams.— Yes.

Mr. Shuster.— But so far as that cash was concerned the bank was your debtor?

Colonel Williams.— Yes.

Mr. Shuster.— Were you present at the time the discussions were had and the resolution adopted in June 30, 1913, at the Public Service Commission awarding you these allowances of interest?

Colonel Williams.— I was present at certain discussions? I am not sure that I was present at the date of that resolution. Mr. Yeomans says I wasn't.

Mr. Shuster.— Do either you or Mr. Yeomans know the reason why you and the Public Service Commission took this determination out of the hands of the engineers?

Colonel Williams.— We didn't take it out of the hands of the engineer. We always have claimed, where we have had occasion to claim, that in our own mind that we have always felt that the engineer under the provisions of the contract wasn't the man to make the determination. Now the Chief Engineer was a subordinate in the Commission.

Mr. Shuster.— Well, wasn't it under the provisions of the contract when it came to the determination of the cost?

Colonel Williams.— No, under the provisions of the contract, the Commission could dispute his determination just as we could dispute it, and the Chief Engineer was the real judge of the charges that go into the construction and equipment.

Mr. Shuster.— But this discussion on the resolution didn't arise on account of any dispute on the part of your company or the commission of any determination.

Colonel Williams.— No.

Mr. Shuster.— And you did as a matter of fact, ignore the strict provisions of the contract?

Colonel Williams.— We didn't ignore it, no.

Mr. Shuster.— Strictly, I suppose technically, the Commission ignored it, but it was a natural thing for them to do because Mr. Craven was an engineer and not an accountant or a lawyer.

He had the same expert accountants to call upon that the Commission had?

Colonel Williams.— Yes, but he naturally referred to their decision on some of these general matters.

Mr. Moss.— And he had the advice of Mr. Harkness also who was a lawyer pretty well posted in the contracts.

Mr. Shuster.— Yes and he concedes that technically it was a discount as was contended for by Mr. Turner and also by Dr. Webber, both experts.

Colonel Williams.— Well, you must remember that Dr. Webber and some of the other subordinates of the Commission fought

quite strongly during the negotiation of the contracts for certain language, one of which related to the question of interest and one, I think, to the question of discount and they never have quite become reconciled to the fact that their ideas at that time were disregarded by the city officials.

Mr. Shuster.— Well, I don't know that I blame them very much. I am rather inclined to think that they were nearer right than the city officials.

Colonel Williams.— That might have been, but their idea was not incorporated in the contract.

Mr. Shuster.— Well, now, Mr. Williams, if you will turn to the next page, forward I think it is, you will find there another bill of the Brooklyn Rapid Transit Company rendered against the New York Municipal Railway Corporation for expenditures for superintendence, etc. Do you know how your corporation arrived at those various charges, more particularly the administrative salaries? Or, I would state so as to enlighten you, as to what I am getting at here, that the Public Service officials have testified before us that they did not have—that this was not based upon vouchers or original evidences of payment but all they had before them practically was this bill as rendered.

Colonel Williams.— Oh, no, they sent an accountant, as I recall it, to our office and he made an examination of pretty nearly all of these items.

Mr. Shuster.— Well, Dr. Webber, who approved this, didn't have any such data before him.

Colonel Williams.— Mr. Abel, didn't the Public Service Commission send an accountant to our office to go over all the books of accounts and vouchers with reference to these papers?

Mr. Abel.— Prior to the contract our books were checked over by the Public Service Commission's representative, Dr. Webber and assistants, or Dr. Webber himself, and since that time every dollar that has been expended is represented by a voucher that is filed with the Commission at the time.

Q. (By Mr. Shuster.) You don't mean to say that there are vouchers filed with the Commission for these items under superintendence in the same determination? A. (By Mr. Abel.) I mean that we submitted vouchers to the city for every dollar that was expended.

Q. Well now, you differ markedly from the testimony of Dr. Webber and Mr. Turner in regard to how this was arrived at. They didn't base it on the vouchers at all, but rather upon the good faith of your statements to them, according to their testimony. A. Dr. Webber's assistant, Mr. Hager, came over to our office and examined every voucher and he examined the checks and then he went still further and he went to the Central Trust Company to examine their books.

Q. I wonder whether you might be thinking of something different from what I have got before me. Suppose you look at that bill. That is taken from the Chief Engineer's own files. (Handed witness bill.) A. Yes, sir.

Q. And that is the bill that you rendered and upon which they predicate the determination? Take for instance, your administrative salaries there, that covers the period from 1911 to March, 1913. A. These are only a part of the total that we submitted to the Commission and these are the items which Dr. Webber picked out from that total exhibit and said he would approve as items to go into the Engineer's prior determination. There were some items, such as advertising, etc., to which exception was taken by him and, as I recall it now, I asked Dr. Webber to send over a statement of just the items that they were going to take up so that we might know just what items were not taken up so as to credit out the items that would be included by the Engineer and not be all at sea as to what was left unadjusted.

Senator Thompson.—How did we get that, "T. F. Williams, \$50,000.00?" A. The Brooklyn Heights Railroad Company employees, of which Mr. Williams was, had been used on this subway prior to the development of the New York Municipal Railway Corporation and for the service of these employees it charged the Brooklyn Rapid Transit Company one hundred thousand dollars, which was computed on the basis of half of Colonel William's time for two years.

Senator Thompson.—Colonel Williams gave half his time to this enterprise? A. I think he gave nine-tenths of his time.

Senator Thompson.—Well, why didn't you charge nine-tenths? A. It is arbitrary.

Senator Thompson.—That means he gave nine-tenths of his time towards trying to bring about the execution of these dual subway contracts? A. Yes, sir.

Senator Thompson.—So that is what that is. That is an arbitrary fixing of fifty thousand dollars for his time which he gave to bringing about the execution of the contract? A. Yes, sir.

Senator Thompson.—During all of which time and negotiation he represented the Brooklyn Rapid Transit and the subsidiaries so far as they were interested in the dual contracts? A. Yes, sir; and the Brooklyn Heights were paying one-half his salary.

Senator Thompson.—But all this time he represented the Brooklyn Rapid Transit in negotiations and he did not represent the city and he did not do anything for the city whatever. He did for the Brooklyn Rapid Transit, is that correct? A. Yes.

Senator Thompson.—Colonel Williams, you spent all your time doing the best you could for the Brooklyn Rapid Transit, getting just as good a contract as you could and getting everything in there that you could put over that would be of benefit to the people that you were working for, which were the railroads?

Colonel Williams.—Part of the time.

Senator Thompson.—Well, I say you got everything you could.

Colonel Williams.—Yes.

Senator Thompson.—Every time you would get anything for the railroad, why it would be a corresponding disadvantage to the city?

Colonel Williams.—Not corresponding, no.

Senator Thompson.—For instance, if you put in the item of construction the question of interest that benefited your railroad at the cost of the city?

Colonel Williams.—No, it benefited the city, too.

Senator Thompson.—But still you represented the city, too? How can the railroad run all this time when you were giving nine-tenths of your time to this other matter?

Colonel Williams.—Well, it would run itself pretty well.

Senator Thompson.—Why have you charged the railroad all the time?

Colonel Williams.—All the companies are paying me now and all the companies were paying me then.

Senator Thompson.—Just the same and then you were spending nine-tenths of your time making this contract?

Colonel Williams.—Yes.

Senator Thompson.—Now you give all your time to the company?

Colonel Williams.—I did then.

Senator Thompson.—Well, this fifty thousand dollars represents that time that you put in in addition to all the time you had?

Colonel Williams.—Not exactly, no. I was working day and night, working all night frequently all night and all day.

Senator Thompson.—You have not done that since?

Well, you got a bonus for that night work.

Colonel Williams.—I did. I was working for a company that was not created. My salary was to be paid by one or two companies that were existing at that time, arbitrarily. I was doing all that my predecessor as president had done and in addition trying to accomplish this bigger transit proposition and it was perfectly proper that whatever company was to be the beneficiary of these services, should pay for the time interval of preparation so that the New York Municipal, when it was finally agreed, did not pay to me. You must remember that pay back to the Brooklyn Heights Railroad Company and the Brooklyn Rapid Transit Com-



pany, half the moneys that they had paid me during those two years.

Senator Thompson.— I understand. If it took all your time, and it does now, to operate the railroad, how could you find any time to help the city fifty thousand dollars' worth, for which the city should pay? I wonder what was the real thing behind this.

Colonel Williams.— The city doesn't pay anything at all.

Senator Thompson.— Well, why do you waste any time charging this to the city?

Colonel Williams.— Well, it was a proper charge upon the construction account.

Mr. Shuster.— This fifty thousand was not a part of the compensation allowed you?

Colonel Williams.— Not a particle.

Mr. Shuster.— Do you know to what account the moneys allowed and paid you for special services stands charged upon the books of your companies?

Colonel Williams.— Profit and loss accounts.

Mr. Shuster.— Paid out of the income of your company?

Colonel Williams.— Paid out of the surplus earnings of the Company.

Mr. Shuster.— And no part of that is charged to construction?

Colonel Williams.— Not a particle.

Mr. Shuster.— Can any part of it be charged to construction?

Colonel Williams.— No.

Mr. Shuster.— You make no claim that it could be?

Colonel Williams.— No.

Q. (By Mr. Shuster.) Well, these items are items by proportion rather than items by expenditures for certain, given, definite things? A. (By Mr. Abel.) They are a part of the actual sal-

aries paid to the parties named there by the Brooklyn Heights and apportioned by the Brooklyn Heights to its affiliated companies which affiliated companies had been charged a pro rata amount at the time the salaries had been paid.

Q. Were these amounts then credited back to the Brooklyn Heights Company? A. Yes, sir, the hundred thousand dollars was.

Senator Lawson took the Chair at the request of Senator Thompson.

Q. Now these legal expenses, \$15,000. A. That is a part of the hundred thousand dollars.

Q. Fifty thousand dollars to Colonel Williams, fifteen thousand to legal services, and ten thousand, twenty-five thousand for Mr. Yeomans and his employees. A. That makes up the hundred thousand.

Q. Was that twenty-five thousand paid to Mr. Yeomans, part of his regular salary?

Mr. Yeomans.—I didn't. A. Mr. Yeomans didn't get that. The Brooklyn Heights got that. You see there was no subway company in existence at the time all these things were done and this was given to remunerate the Brooklyn Heights for their employees, when the Municipal was finally organized.

Q. Well, do I understand that Mr. Yeomans and these other people named here did not receive any part of this money? A. Not any part of the hundred thousand that I am speaking of. Mr. Yeomans did get something.

Q. Well, it is twenty-five thousand. A. That is a part of the hundred thousand which was arbitrarily charged by the Brooklyn Heights.

Q. Do you know whether the amount of your special compensation was paid out of surplus profits or earnings?

Mr. Yeomans.—That was earnings.

Q. No part of that was capitalized?

Mr. Yeomans.—I think it was. What I did receive, as I understand, was charged to cost of construction. A. The money that

Mr. Yeomans received he received from the New York Municipal Railway Corporation.

Q. Has that been allowed by the Engineer in some quarterly determination? A. I think in the first quarterly determination.

Q. How much was that?

Mr. Yeomans.— That was thirty thousand, all told.

Mr. Shuster.— The companies are not as generous as the Interborough.

Mr. Yeomans.— I would like to state in that connection when we started out on this contract, we thought of getting some outside counsel and I consulted one outside counsel who was to work on this contract and he wanted seventy-five thousand dollars and we decided not to employ him and this twenty thousand dollars was paid for the work that we were going to arrange with certain outside counsel to get. Had it not been paid it would have cost one hundred to one hundred fifty thousand dollars.

Q. Were there any other special compensations allowed in the construction cost by the Commission? A. (By Mr. Abel.) The only special compensation that I know of is embraced in the statement that we have been given, to Mr. Perley Morse, I think it was.

I don't recall just now what there is outside the ones referred to there and those referred to in the first quarterly determination.

Q. Why, if you have capitalized and charged to construction the other special compensations, did you not also charge the same accounts to Colonel Williams? A. Why, the Brooklyn Rapid Transit Company gave Colonel Williams the bonus and that has nothing whatever to do with cost of construction. It was given him.

Q. It had nothing to do with the New York Municipal? A. Well, in a sense, it perhaps had but those things were considered when the Brooklyn Heights Railroad Company rendered its bill to the New York Municipal, and it, in that account, figured what was a fair allowance for the time being devoted to the subway and for which he had been paid. That is, his regular compensation and I don't know whether the matter was discussed with the Public Service Commission, but at any rate, it was agreed that one hundred thousand dollars should be charged by the Brooklyn

Heights and it was divided in this way. That money did not go to the individuals named, but it was to compensate the Brooklyn Heights for the services of its own employees. Now, if the Brooklyn Rapid Transit wanted to give Colonel Williams a hundred thousand dollars that is a matter outside of the contract.

Q. That is none of our business if it paid it and paid it out of some other source than their capital account. That is the stockholders' business, not ours.

Colonel Williams.— The stockholders are included.

Mr. Shuster.— You have got that cinched, Colonel. You played it a good deal wiser than our good friend Rogers.

Mr. Shuster.— I suppose you all have regretted you weren't bankers in this proposition.

Colonel Williams.— You bet I have regretted I was not a banker.

Q. (By Mr. Stover.) Well, as I understand the situation, the Brooklyn Rapid Transit Company issued notes, par value, forty millions of dollars and they sold those notes to certain bankers at ninety-five cents on the dollar. A. (By Mr. Abel.) We arranged to borrow on a six per cent. basis. The bankers said, "We want a five per cent. note and not a six per cent. note."

Q. Yes, I understand that. They got ninety-five cents on a dollar. A. On a six per cent. basis.

Q. Was the money held subject to the order of the Brooklyn Rapid Transit Company? A. No, that money was to be held for the purpose of the bonds. The Brooklyn Rapid Transit was nothing but an agent in this matter to borrow the money.

Q. How long was that money held by the banker before? A. From October 1, 1912, to March 19, 1913, when the contract was signed, then about that time the New York Municipal bonds were sold to the Brooklyn Rapid Transit and the proceeds of the notes were used to buy the bonds so far as they would go and the Brooklyn Rapid Transit had to make up the difference.

Q. What interest did these bonds bear? A. The bonds bear five per cent.

Q. And what did the Brooklyn Rapid Transit give for the bonds? A. Ninety-seven on their face.

Q. And so ultimately it will all be charged up against the city, the charge already made in this prior determination of November 19, 1913, and an additional charge representing the difference between ninety-seven and par of the bonds. A. Exactly. Or stated another way, the six per cent. interest charged you in the period of construction and six per cent. charged you in the period of operation plus the six per cent. on the New York Municipal long term bonds. That is all there is to the story and it can be told in a half dozen different ways.

Q. Is the New York Municipal operating any of these railroads now? A. The New York Municipal assigned to the New York Consolidated and it is operating a part of these roads. Six per cent. is allowed under the operating contract and is paid by the New York Consolidated to the New York Municipal out of which the New York Municipal pays the interest on the bonds and the one per cent. is credited to the cost of construction.

Q. Well now, will you explain this to me, in the latter part of this resolution of June the 30th, 1913, there is this language:

“Upon the express stipulation and condition that there shall be deducted from the cost of construction and the cost of equipment an amount equal to one per cent. per annum, payable semi-annually upon the cost of such construction and equipment computed from the date when said construction or equipment is placed in question to July 1, 1918.”

A. Under the provisions of the contract being credited back to construction because that is prior to 1918, if any part of the road goes into operation before 1918 then, as an operating proposition under the rental provision of the contract we get six per cent. interest. Now, having collected one per cent. in advance that one per cent., difference between the five per cent. we pay the bond holder and the six per cent. we collect as an operating deduction, but the contract denies the right to any profits and, therefore, that must go back as a credit to construction and they wanted that.

Q. That should be deducted from the railroad contribution towards the railroad construction? A. The New York Consolidated in respect to any part of the line that goes into operation, and the one per cent. credited to construction and the five per cent. that it pays to its bondholders, that it gets from the Consolidated, re-

duces the amount from the proceeds of the bonds and it would be charged to the construction.

Q. Then this one per cent. would be deducted from the railroad contribution towards the railroad construction? A. Well, when you say the railroad contribution. The railroad has a contribution of thirty millions.

Q. The one per cent. would be credited in the different divisions of cost? A. It is the same thing. We term contribution at thirteen and a half million dollars.

Q. Well, to reduce the sum on which the railroad is entitled to six per cent. interest? A. Exactly. If that hadn't been in there we would have credited it any how because the contract provides for it, but they were fearful that we wouldn't and so they wanted it expressly stated. Of course, that would have constituted a profit and we are not permitted to take profits.

Adjournment to 11:00 A. M., Wednesday, June 14, 1916.

Brooklyn Rapid Transit Co.....	\$142,649,218
Transit Development Company.....	17,185,165
Coney Island and Gravesend Railway Company...	2,987,000
Broadway Subway and Home Boroughs Car Advertising Co., Inc.....	10,000
Coney Island and Brooklyn Railroad Company....	9,622,260
DeKalb Ave. and North Beach Railroad Company.	10,000
Brooklyn Heights Railroad Co.....	5,022,730
Brooklyn City Railroad Co.....	18,925,000
New York Consolidated Railroad Company.....	57,138,139
New York Municipal Railway Company.....	60,200,000
Nassau Electric Railroad Company.....	34,528,244
Brooklyn, Queens Co. & Suburban R. R. Company.	10,420,452
Prospect Park and South Brooklyn Railroad.....	50,000
New York and Coney Island Railroad Company...	100,000
Bridge Operating Company.....	100,000
South Brooklyn Railway Company.....	2,847,944
Prospect Park and Coney Island Railroad Company	1,200,000
Coney Island and Brooklyn Terminal Company...	500

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\$362,996,652

**JUNE 14, 1916,**

Meeting called to order at 11:40 A. M., Senator Thompson presiding.

Senator Thompson.— We will have a duplicate of the Executive Session we had the other day wherein we will allow the Committee Counsel, representatives of the city, representatives of labor and representatives of the press remain on the condition that the press be muzzled.

(Laughter.)

Mr. Brady.— Mr. Chairman, I would like to offer an objection to that, that in so far as the Unions are concerned, the widest publicity that you can give to anything they have on us will be appreciated. And we want to give the widest publicity on what we have on the Police Department. I am going to assure you that unless you hold us in contempt we will be apt to make you do some thinking before we get through with the hearing.

Senator Thompson.— Mr. Moss, I think that agrees with our understanding that we see what there is to this before we go into public session.

Mr. Moss.— I have never known them to go over the rule, these sinking fund commissioners.

Senator Thompson.— (Addressed to Press) Have you ever been discharged? Have you ever had your appointments revoked, you of the sinking fund commission? A. (By Many Newspaper Men.) Never.

Senator Thompson.— You have got charge of the proceedings, Mr. Moss.

Mr. Moss.— Yes.

Senator Thompson.— I understand the representatives from the Brooklyn Rapid Transit are here.

Gentlemen, we will again make an exception to the rule. If you hear anything scandalous around this meeting you must not repeat it.

“ Mr. Yeomans and Colonel Williams.— All right.

Testimony of LEON C. CODLEY.

Examination by Mr. Frank Moss. (Witness sworn.)

Mr. Brady.— Mr. Chairman, while Mr. Godley is on the stand he might give some other information about a direct charge which we want to make against the Police Department this morning, attention of which has not been called to in the letters given to the Chairman of the Committee. That is that the Police Department are scabbing it on the strike breaking agencies to the extent of furnishing plain clothes men and regular policemen of the Department, in plain clothes, to escort men from an establishment where a strike is on to their homes. That has been found out by pickets who have followed the policemen on the job and men who are employed as non-union men, and have escorted them to their homes and seen the policemen leave them at the door of their residences. And it is said by one gentleman that his influence with the police department is so great that Deputy Commissioner Lord will furnish him with fifty policemen for this purpose. The charge is, eight men, all from the department, two from the Inspector's Staff and two of them from Police Headquarters, act as pickets. I don't know what the strike breaking agencies will do about it now that the police department is taking over their jobs, but it is a charge that we make against it just the same.

Senator Thompson.— Well, do they do it over the telephone?

Mr. Brady.— I haven't any doubt but what they do it over the telephone. I have the business agents of the business who are directly interested here who are willing to substantiate the charge which I make in greater detail if necessary.

Senator Thompson.— But you realize that if it is a question of the improper conduct of the police department, why, we haven't any jurisdiction to investigate that. It is only things that pertain to the public service.

Mr. Brady.— There doesn't seem to be any place that we can go for relief from the discrimination of the police department unless your committee could do something with it.

Senator Thompson.— Mr. Swann hasn't resigned, has he?



Mr. Brady.— Not that I know of. I had a conference with Mr. Swann yesterday and I didn't know it at that time.

Mr. Godley.— He didn't have to go anywhere except police headquarters. I don't know anything about this but the police issued an order last week that the force should be neutral between both but they should preserve peace. They should not interfere with pickets peacefully talking to strikers or strike-breakers, whatever you call them. If the police commissioner's orders are not being obeyed, I will take it up.

Mr. Brady.— Possibly, Mr. Chairman, he might throw some light on these eight men who are acting as strike-guards.

Mr. Hardy.— What jurisdiction has this committee to go into a matter of that kind ?

Senator Thompson.— I don't think we have any.

Mr. Brady.— Do I understand that the corporation counsel objects to our knowing ?

Mr. Hardy.— I don't object to your knowing anything.

Mr. Brady.— And the proper form happens to be in the hands of your enemies so far as the administration is in possession of the ammunition that you can use. I don't include the district attorney's office in that, Mr. Chairman, I merely include the police administration and the power which appoints the police administration in the city.

Mr. Hardy.— Now, Mr. Chairman, I have produced Mr. Godley here at the request of Mr. Moss and I am perfectly willing to have him give you any information that he has regarding these wires. Commissioner Woods has given you some information or such information as he had in Executive Session. Now, if you want to get anything more we will be glad to give it to you.

Senator Thompson.— We brought you here at the request of Mr. Brady. It came through a letter to the Committee yesterday.

Mr. Brady you interrogate him as you like.

Mr. Moss.— So far as this matter, the arrangement of Mr. Brady

is concerned, we will consider that. We will not touch that subject at this time but I will proceed along the line as laid out and will first ask Commissioner Godley to give us what information he has concerning the tapping of the wire of the International Ladies Garment Workers Union, 32 Union Square, Stuyvesant 1126-7 and 2123, which tap appears to have been ordered on the 11th of May. These wires were tapped sometime about February 1, 1916: Misses and Children's Dressmakers Union, 79 East 10th, No. 5052, Stuyvesant, and the Amalgamated Clothing Workers, 32 Union Square, Nos. Stuyvesant 2240, 4867, 4838.

Mr. Godley.— May I make a statement, Mr. Moss, before I answer?

Mr. Moss.— All right.

Mr. Godley.— I have not known anything about this interrupting service on wires at first hand. I have been assigned to Brooklyn since I have been in the department. I have been in charge of Brooklyn and I have been trial commissioner and so, as a matter of fact, I have no first hand information. I was acting commissioner and I also knew something about the Baff case and there is one other case where I took up with the district attorney, the question of locating a fugitive from justice by intercepting a wire. Now, aside from those cases I have done the best I could to get the information before your committee and I got your subpoena last night at six o'clock. I want you to understand the information that I am giving you is what I can get.

Q. (By Mr. Moss.) You have got them all on your list there, all that I have inquired about? A. Yes. With respect to these three wires that you spoke about, I am informed that having reason to believe that certain members of that Union were to be indicted for various offenses the wires were covered.

On May 11th, it was learned through the supervision of the wires that a conference was to be held at the Prince George Hotel. Detectives proceeded to that place and the following persons who had then been indicted were located and arrested:

Harry Kelinman, attempted extortion and roit; Sam Shore, Felonious assault, injury to property and riot; Julius Woolf, murder in the first degree and attempted extortion.

Solomon Metz and Max Zeigman, charged with murder in the first degree and riot, and murder in the first degree and attempted extortion, respectively, were present in the hotel when Kleinman, Shore and Woof were arrested, but were not taken into custody at that time because of an arrangement with the District Attorney. Two days later they were arrested at the Criminal Court Building on superseding indictments.

Through the agency of the telephone supervision referred to above, the following were located and arrested at the places mentioned:

Abraham Baroff, in front of 30 First Street, charged with riot and assault.

William Tremofsky, at the corner of Grand and Orchard Streets, charged with attempted extortion.

Sam Lefkowitz, at Criminal Court Building, May 12th, charged with riot.

John Wedeger, at place of employment, 29 West 29th Street, on May 14th, charged with murder in the first degree.

Certain information was received, I am told, which led the department to believe that violence would be attempted at a certain place. Detectives were sent there but nothing happened.

Other certain wires were again supervised for the purpose of locating two women and one man who had been indicted. This I am not at liberty to tell you, which ones were supervised for the purpose of locating these three people who were under indictment, two for assault in the first degree and one for robbery. Those people have not been apprehended. You will, as a lawyer, of course, see that we can't disclose information as to cases that are still not finished.

Q. (By Mr. Moss.) That finishes as to the Stuyvesant?

Mr. Brady.— No, it doesn't, Mr. Moss.

Q. Wait a minute. Does it finish the statement? A. I am not sure.

Mr. Brady.— I beg your pardon.

Q. Have you finished the statement with reference to those three wires? A. I can't tell you about the wires; we have not appre-

hended the parties in connection with those certain wires supervised.

Q. Well, were those persons who were arrested members of this Union? A. I am informed they were.

Mr. Brady.— You asked the commissioner to explain the International Ladies Garment Workers Union and he has given you an explanation of the Amalgamated Clothing Workers all of which have been tried. A. (By Mr. Godley.) When an indictment is made a bench warrant is issued. We are directed to apprehend and bring before the court at once the bodies of such defendant.

Mr. Brady.— Were these members of the Union who were tried and acquitted? A. I believe that they were.

Mr. Brady.— They were members of the Amalgamated and not an organization at that connected with the American Federation of Labor. I want to make that clear the Amalgamated Garment has no connection with the Federation of Labor.

Mr. Moss.— Is that the case where six persons were tried at once?

Mr. Brady.— Were tried at once by district attorney Perkins and were acquitted.

Mr. Moss.— Well, according to the statement given by Mr. Godley that does not relate to the International Garment Workers. A. The information that I have is that they were located through those wires.

Senator Thompson.— That is the first time I have heard of the district attorney's office losing anything. A. I am unable to state what the result was. That is none of our business. Our business was to get the man.

Senator Thompson.— Do you regard that the limit of your duty to obey the warrant to produce a man? A. "The limit of our duty," what do you mean?

Senator Thompson.— Well, I mean is it a part of the duty of the police department to look for evidence and to assist the attorney in indicting a man? A. It is the duty of our department to produce all the evidence we can for the district attorney.

Senator Thompson.— Well, you are interested in the result. A. We are not interested in the result. Our business is to produce the evidence.

Senator Thompson.— Do you regard it your duty to go and get the evidence? A. If the district attorney hasn't the evidence. In an indictment he generally has all the evidence.

Q. (By Mr. Moss.) Now, if those persons that you have alleged are members of the Amalgamated their telephone numbers are entirely different from the question which I gave you. A. I am only giving you the information that I have as that over these wires.

Q. I recall that case where six men were tried together and I recall that their defense was largely a defense of oppression and frame-up. The jury evidently took that view of it and acquitted them after a long trial.

We go to the next one which was June the 16th, 1915, Stuyvesant 2123 and 1126, the same International Garment, with the additional names of John B. Dyches and B. M. Rabinowitch. Will you explain that? A. That is covered by the statement that I have already made, by the statement about three people we have not produced.

Q. Does that include, March 12, Bryant 6874, Kenmore Detective Agency, 1492 Broadway? A. I don't know.

Q. Have you that on your list? A. I have not. I was furnished a list of Unions. I remember at least one detective agency. They went in the wire on the theory that some employers were hiring gangsters through them. Now whether it is that detective agency or not I don't know. I would have to verify it.

Q. Now the next one is February 1, Stuyvesant 5058, Misses and Childrens Dressmakers Union, 79 East 10th Street? Will you explain that? A. I have been unable to find exactly what information was presented to the Police Commissioner with respect to that and some other wires including the Amalgamated Clothing Workers Union.

Q. Yes, that is the one that Mr. Brady was just speaking of, which was tapped January 15, Stuyvesant 2240, 4867 and 4863, and there is another, January 19, Spring 8048, N. Y. Cloth Cutters Union, 27 East 4th. A. And the Dressmakers Union.

Q. Yes. A. I have been unable to ascertain by reason of the fact that I would have to ask practically every member of the department what facts entirely were presented to the Police Commissioner with respect to all of those wires. I spoke to him Saturday at his wedding. He said that he had invited the labor union people to come to his office and that he would give them all the information and that they had not appeared. He didn't speak anything more about those specific wires. He said also that he had gone over all the wires with the Thompson Committee in executive session.

Q. What he said upon these wires in the Thompson Committee was that they were in connection with strikebreakers. A. I got some information as to that also, but I have been unable to get it from the nature of the case and I will be unable to get all the information which was presented to him without interviewing every member of the department from the top to bottom.

Q. Well, that would be over ten thousand people. A. Exactly.

Q. Would you have to interview them all?

Mr. Brady.—Do I understand that ten thousand men are listening in on the telephone wires of this city? A. I defined that some information was presented to him about some of the Unions and some of the employers hiring what we call guerrillas to protect the employers' property or to protect the Union. I know in one case in Brooklyn we had information that an employer over there was hiring guerrillas. We went there and verified it. He was. I sent word to him that either he would discharge the guerrillas or there would be some people in the hospital.

Q. That didn't come in on the telephone? A. I don't know. I know we did cover some detective agencies where, I am informed, the employers were in the habit of hiring guards or guerrillas.

Q. There is just one detective agency upon the entire list furnished by the Telephone Company and that is the Kenmore Detective Agency, Bryant 8874, where a tap was ordered on March the 12th, 1915. A. I think you will find another, Sulkas, I think the name is.

Q. It is not on the list furnished to us and I only know that Commissioner Woods told us that this was put on in connection with strike-breaking.

You see, Mr. Godley, Mr. Woods gave us to understand that he didn't have personal knowledge of these matters, consequently we did not press him for personal knowledge, which he disclaimed. Now, as he didn't have personal knowledge but was merely testifying from a memorandum which somebody had made up for him and as you say you haven't any knowledge. I am led to ask you, isn't there a record at police headquarters in which the data is recorded which authorizes the Commissioner in his judgment to order a tap? A. I am unable to find any record of that kind. The nearest that I have been able to get is the statement by some of the detectives that they received information from sources from which detectives get information, that certain unions were hiring or about to hire these guerrillas, as we call them, and that that information was communicated to the Commissioner. Now, I don't know to what extent he personally got the information. Of course I can't tell. I am only giving you that in connection with the employers doing the same thing.

Q. I want to tell you, Mr. Godley, how this matter stands before us. I think it was the mayor that used the term in his testimony, "Supervising wires." We said that it was in the jurisdiction of this committee to inquire into this phase of the telephone operation because the police assumed in certain cases to supervise wires. Of course, anybody that assumes to supervise wires comes within the jurisdiction of this investigation. Now you realize that when a man goes to telephone in a Pay Station where there are booths he closes the door so that the persons on the outside may not hear what he says, but there is a number of cases where these taps have been put on public Pay Stations where, we may assume, the individual closed the door when he went in. I speak of that in illustration of what has come to my mind, that this is something like a search warrant. You can't enter a man's house to look for something without a search warrant, unless you have evidence that a felony has been committed which authorizes you to break in. You can't enter it without a search warrant. Now, to get in on a man's wire, which ordinarily is supposed to be private, is something like going into his house and searching his house and if the police commissioner assumes to exercise that as a right, doesn't it seem to you, Mr. Godley, that at least there

should be a careful record made of the reasons which have been given to the police commissioner and the phases of the order he makes, before invading the premises of a citizen and searching for information? I might go further and say there ought to be a court to issue the warrant, but I don't discuss it on that basis. Don't you think that a police commissioner who thinks that he is within the law on this, that he ought to get in on a man's wire, should make a record of it, a careful, accurate record showing the information that he has received and all the basis of his order? A. I should say not. I have found in my experience in the police department that the things we make records of frequently leak. That is a common experience of anybody that has been at headquarters and if I were the police commissioner I would be satisfied myself by being advised, as I have been by the district attorney, that we had the right to do it in a specific case or by the decision of the courts. We have had three. We had one from Judge Kelby in Brooklyn. I think that Justice Davis of the Appellate Division handed down a decision the other day and my impression is that Mr. Justice Mellen issued an order.

Q. But those judges didn't know that he was not keeping a record. We asking you to justify yourself for going in on a man's wire and you are unable to give it. You don't know and nobody knows and you say that you would have to ask ten thousand policemen to find out. I assume that you have in your office or Mr. Woods has in his office a safe. Why couldn't a record of this sort be kept in the commissioner's own possession, in his safe, if you like, where he would record such an important matter as an invasion of the private rights of a citizen on police grounds, so that if he is ever asked about it, or perhaps sued for having invaded a citizen's privacy, he could give the reason. A. I wouldn't. I haven't any safe in my office.

Q. Of course, if you wouldn't, the fact that you wouldn't is important for us to know. A. I wouldn't. I wouldn't take the chance.

Senator Thompson.—We have heard a good deal on this subject. I don't believe that there is any moral, ethical, legal or constitutional right on the part of any public officer to invade, by supervision, the private conversations of individuals within the



territory of its jurisdiction, without making a record of it and without in some way, justifying the act. I don't believe that in this Republic you can impose any such power in any public official and do it safely.

Is Mr. Potter's wire now under supervision? A. I am informed that it is not.

Senator Thompson.—Did you hear of his statement before this committee which he made Monday? A. Only incompletely. I read a portion of it in the paper.

Senator Thompson.—On Saturday he said that he had heard a conversation over his wire. A. That is absolutely impossible, I am told. These people who supervise the wire only use these patent receivers. They couldn't say anything over the wire if they wanted to for they have no transmitter.

Q. (Mr. Moss.) That is where it is supervised in your office?

Senator Thompson.—That is last Saturday? A. I may say that lots of those people think that they were supervising some wires down there and they gave something of the same kind of story.

Senator Thompson.—They are making more trouble running around this city because they think my wire is tapped they won't talk with me.

Q. (Mr. Moss.) If we would ask Sergeant Dunham he wouldn't be able to tell. A. He would tell you that he got an authorization from Mr. Woods.

Q. Is there anybody else who can give us the basis of it all? A. For instance Commissioner Scull can give you some very definite information on blackhand wires. I don't think so.

Q. But about these? A. No.

Q. When Mr. Woods was here we could not get any definite information upon these particular wires. He had simply ordered them upon somebody's request. You haven't any and you don't know of anybody that has? A. No. Of course I understand that he was perfectly willing to tell the people interested, Mr. Brady, if they had come to headquarters before he went away last week.

Q. Well is there anything that he would tell Mr. Brady? A. He could tell why he did it.

Q. No, but the explanation made here is that he did it on somebody else's request. A. I have been unable to locate that other person except that I know that certain information was conveyed to him about unions hiring guerrillas. That, I know. What else was conveyed to him I don't know.

Q. Mr. Brady said the other day that he didn't believe any wires of employers of labor had been tapped in connection with these purposes in employers' organization. Have you any record of any such? A. My information is that the employers hire their guerrillas through strike breaking agencies. My information is that this one I gave you a few minutes ago, I think the name is Sulkas, was tapped.

Q. Well, there is certainly no Sulkas on this list and there is certainly no detective agency except this Kenmore Agency.

Mr. Brady.—Are any of the strike-breaking agencies of which we furnished you a list on that list? That is, the Burns, the Pinkertons, or any of those that are especially active in furnishing guerrillas and run men as strike guards, as we call them, to assist and break strikes.

I want to say this, Mr. Counsel, in reference to the Police Commissioner's invitation to see him, I have yet to see it. I will be very glad to receive it.

Mr. Godley.—I remember there was a statement in the newspaper from Mr. Brady that he refused to go there. He wanted to see him here or something of that kind.

Mr. Brady.—I think that the Commissioner's information is incorrect. I remember reading a number of newspapers. I said that we would be glad to meet the Commissioner, but that it couldn't be as a member of our committee. It was very easy to locate us. He was very familiar with our telephone wire and we haven't got our office hidden away at all so anybody can reach it.

Mr. Hardy.—I told Mr. Moss and I told Senator Thompson that the police commissioner would be very glad to see Mr. Brady.

Mr. Moss.—And I communicated that information to Mr. Brady.

Mr. Hardy.— I noticed an interview with Mr. Woods in which he said that it appeared some irregular invitation had been extended. I can't always trust those reports.

Mr. Brady.— Well then, I understand, Mr. Counsel, that this information came from Mr. Woods through Mr. Hardy to you and through a messenger to my office.

Mr. Moss.— Don't call me a messenger.

Mr. Brady.— I did not mean such a thing.

I want to say, Mr. Counsel, that that is just the attitude the administration in this city takes. We get that much courtesy and just " that much respect.

Mr. Moss.— When you have drawn me in as a messenger you have no right to take any exception to lack of courtesy and that because I happened to be the instrument for conveying the police commissioner's desires. He may have thought that he was honoring you.

Now that the record is perfectly clear, I may say, that when Mr. Woods was here I said that I had had a talk with you and it seemed to me that it might be a good idea for you two gentlemen to get together if he would tell you everything that you wanted to know and he said he thought it would be and asked me where he would find you and where you could be informed. I said that I presumed I would see you very soon and I offered to convey his message to you. I had no idea that I was making myself a messenger in that. I thought I was pursuing the course that wanted to see the right thing done between two gentlemen.

Mr. Godley.— I may say, that while this is not a part of the investigation still it may be of interest, my share in running the department is this: we are bound to keep order on the streets; we are not interested with the employer or the union. The instructions to the police were issued last week based on very carefully judicial decisions as to rights of strikers and employers and the police were instructed then to observe strict neutrality on all strikes and I assume the orders are being carried out. If not, I will take it up.

Mr. Brady.— In connection with that the police continue to

take strike-breakers to their homes. Is that necessary to preserve what is supposed to be the peace, to that extent of going out of their inspection district and going into another Borough, going from the west side of New York to a portion of Queens to take strike-breakers to their homes?

Mr. Godley.—If there is reason to apprehend violence. Not beyond that.

Mr. Moss.—Mr. Brady are there any questions?

Mr. Brady.—No. Mr. Chairman, Mr. Godley has read a statement to you and has substantiated that by a verbal statement as to the condition of the records and has said that his real job is taking care of Brooklyn. The information we want to get is direct from Commissioned Woods or somebody in his office who ought to have the reasons as to why these wires have been listened in on. So there isn't any use in asking any more questions.

Q. (Mr. Moss.) Are you satisfied from Mr. Godley's statements that there is nobody within reach of the Committee that could supply that information? A. (Mr. Brady.) No, I am not. I asked that the entire wire tapping squad of the police department and all of the members of the police force who have the right to listen in come. I want to find out how many listening instruments there are in the police department. I want to get transcripts of the conversations.

Q. (Mr. Moss.) Are the conversations kept? A. (Mr. Godley.) My information is that they are not.

Q. That has already been sworn to with the exception of those involved in the Farrell case.

Mr. Brady.—If they did err in one instance in keeping the conversations relative to the Charities investigation, why, I assume, in view of their attitude towards the unions, that they also have kept the conversations relative to the unions.

Q. Mr. Godley, would you be able to find out? A. I will make every effort to find them, if there any such conversations. My information is that there are not. If any conversation comes in which requires police action that is transmitted to the police commissioner and the action is taken and the thing is destroyed. I remember one conversation being presented to me as acting com-

missioner I think of somebody telephoning to bring his gun over. Now, on a thing like that we would send a detective. I will ask whether there are any records of the conversations.

Q. Then you have done all that you can do to find any records and you are not able to produce any this morning? A. I will continue that search if you want me to.

Q. You might as well.

Would Commissioner Lord or Commissioner Scull be able to give us any information? A. Commissioner Lord was hurt last night. He was struck and run over by a taxicab and you won't be able to get anything from him just now. I talked to him and tried to get all the information that he had and I don't believe that he could help you much.

Q. What about Commissioner Scull? A. Possibly, I don't think, however, that he does know anything. His work is on other lines. He has the homicide and blackhand and some other things that I would rather not mention.

Mr. Brady.—I want to say this for the benefit of the record, that I am not satisfied with Commissioner Godley's statement here this morning. They are perfectly willing to give testimony when the actions of the courts afterwards have justified them relative to the unions, but they want to withhold apparently unjustly other information. They have been anxious to give testimony relative to the Amalgamated Garment ignoring entirely the fact that all those people were discharged in the courts, and have refused to give any information of the International Ladies' Garment Workers Union.

Mr. Godley.—I think that that is a misstatement about true things. I have given you all the information that I have got.

Q. (Mr. Moss.) You are the head of the police department to-day? A. I am. With respect to people being discharged, that is none of our business. If we get a bench warrant it is our business to get the man, get him before the court. The rest is for the court, the district attorney and jury to handle. We can't sit as judges and determine this, after a bench warrant is issued, whether a man is guilty or not. You probably know the language of a bench warrant even better than I do. It directs us to go out and bring

the body of that person before the court and that is our job. With respect to strikes, our job is to see that the streets are not scenes of violence and I think we have done pretty well about that lately.

Mr. Brady.—In connection with that, seeing that the strike-breakers get safely home.

Mr. Godley.—If we have reason to believe violence is contemplated against them. If union men want to talk with them, argue with them, they have a perfect right to do it. If they can induce them to quit work, we don't care.

Mr. Brady.—In this particular business you have made it your business to escort these men home.

Mr. Godley.—I have told you, if there is anything like that that is wrong, if you will give me the details of it, I will be glad to take it up.

Mr. Moss.—You have had half a dozen witnesses here. You have heard Mr. Godley's offer. Why not outside of this committee room give Mr. Godley the evidence you have?

Mr. Brady.—I will be glad to take it up with them. But just what disposal we will make of the evidence we are not able to say at this time.

Mr. Moss.—I think this is as far as we can go.

Senator Thompson.—I think this subject ought to be investigated. I don't think that people have got a right to band themselves together and meet somewhere and conspire to commit a crime. I think that is a bad menace to the government for them to do that. On the other hand, I don't believe that the public officers of this country have got a right to put a premium on perjury. I don't believe they have got a right to indict a man or convict a man and then hold out a reward to him in order to testify to something already indicated to them that he ought to testify to in somebody else's case. I think that is one of the biggest crimes in the American jurisprudence. I think that the government demands efficient, orderly procedure on the part of its citizens and we will never get it.

We haven't jurisdiction to hear this. There isn't any doubt about it and we have tried every way to make it clear to you and we have tried every way to show you that we haven't expressed

it because we wanted to express anything, and we haven't wanted to refuse to investigate anything that we have the right to investigate. There is nobody on this committee that is afraid of the subject and I don't believe it will do a bit of harm for someone who had the jurisdiction to go into it and put the police department and everybody else on the right track and begin anew. We haven't got the right nor the time. If we had the right I would take what time we have and go to it.

Mr. Brady.— May I ask Commissioner Godley through you this direct question: Have his orders to the plain clothesmen been, that is, have his orders, Commissioner Godley's orders, been to escort these men to their homes?

Mr. Godley.— It is not.

Senator Thompson.— For your information, I want any possible theory of investigating this subject for you brought out but it is not within our jurisdiction and I don't believe the governor has got any right to act as limited by the state departments and the only way I can see this can be taken up is either through the Commissioner of Accounts, the head of the police department or the Grand Jury, which by Section 360 of the Criminal Codes, "Have got the right and duty to inquire into" it. The Grand Jury would have a right to make a general inquiry not based on any criminal happenings or information of crime in the conduct of the officers and it seems to me that is the authority that you have got to go take the matter before.

Mr. Hardy.— I want to say to this Committee if these people think they have any grievances about the conduct of that department, we will be glad to meet them any where in any form and take the matter up definitely.

Senator Thompson.— I will suggest this to you. I don't know as I have any right to suggest it at all. Both sides have got confidence, so get together and go ahead and investigate this subject and take care of it yourselves and have home rule. Anything that you will be satisfied with the Commissioner of Accounts will. There is a certain amount of prejudice, but I assume he has got a right to step outside and appoint somebody to walk in and make this special investigation. Why don't you do that?

Mr. Brady.— If it is a case of washing our own dirty linen within the city of New York, we would be glad to accept that, but you can't expect us to take over the present deputy police commissioner on this.

Mr. Hardy.— I have a high regard for Judge Swann. I think they ought to go down and take it up with him.

Mr. Brady.— Then, Mr. Chairman, we can only consider that as a refusal, refusing your suggestion for this house cleaning and washing of dirty linen within our own circle.

Senator Thompson.— But the objection to a Grand Jury is that they have got to be secret.

Mr. Moss.— Unless an actual crime results in an indictment.

Mr. Chairman, we have nothing to do officially with the question of the dealing of the police with strikers, but we have to do with this telephone question and the testimony of Commissioner Godley has left the telephone question in this position: He is now acting police commissioner. He is the head of the police department. He tells us that the information he brings us is all the information that anyone in the police department could give us except the commissioner whom we have already heard and his information upon this matter was from a memorandum that somebody had prepared for him and went no further than to say that these wires were tapped because of strike-breaking. We have asked Commissioner Godley about these taps that were made this year: February 1, Stuyvesant 5058, Misses' and Children's Dressmaker's Union, January 19, Spring 8048, New York Cloth Cutters' Union, January 15, Stuyvesant 2240, 4867 and 4869 Amalgamated Clothing Workers, 32 Union Square, and he says he is unable to give us any information as to the cause for making those taps.

Mr. Godley.— Except that I know there was conveyed to the police commissioner the information that these people were hiring or about to hire guards. What else was conveyed to him I don't know.

Mr. Moss.— Commissioner Woods when he was here was not able to give us those details. We have found from Commissioner



Godley that when these taps are ordered no record of them is made, at least no record of the information upon which the order is made is recorded and that there does not exist in headquarters any where a record of the reasons for this tapping or of the information that was given. We seem to be absolutely unable to get from the police headquarters to-day the reasons why these private wires were invaded, with any particularity at any rate. That is what comes out of the inquiry this morning and I think it very important, very significant. I think it is information that requires action of some sort.

Mr. Brady.— Mr. Counsel, may I make a correction as to your statement. When Commissioner Godley went on the stand you asked him for information about the International Ladies' Garment Workers' Union, the numbers of which are 1136, 1127 and 2123. He gave you information about the other three. The ones that he gave you information about are the Amalgamated Clothing Workers.

Mr. Moss.— That speaks for itself. That was last year. I am taking the three in this year concerning which we are unable to get any information to-day.

Mr. Brady.— Oh.

Mr. Moss.— And I am using that as an illustration that the proposition that I made, that the situation is wrong, the situation is bad, the situation needs correction. I wouldn't rest with it as police commissioner an hour and I know something of the responsibilities of that office. I wouldn't think I had any right to invade the privacy of citizens without making a record of the information I received and the reason for my action if even then I had the right. But if I assumed the right I wouldn't dare to exercise it without making a careful record of the reasons that led me to make the order and I am rather surprised to find that there is no such thing in existence.

Mr. Godley.— As I said, I am unable to find it. He may have a record of his own.

Mr. Moss.— He hasn't for we examined him on that line.

Senator Thompson.—Is there anything we could gain by bringing Mr. Scull and the other Commissioner in here, Mr. Moss?

Mr. Moss.—I hardly think so.

That matter was taken in executive session. I move the record be made public.

Senator Thompson.—Do any of the sinking fund commission object? All right, we will make it public.

The inquiry into the wire tapping is closed.

Testimony of MR. JOHN J. DEMPSEY.

Examination by Mr. Moss. (Witness sworn.)

Q. (Mr. Moss.) What is your position in the Municipal Railway or Brooklyn Rapid Transit? A. I hold the position in the Municipal Railway as transportation engineer.

Q. I have asked you to be here this morning upon the suggestion of Colonel Williams to whom I showed a letter of complaint. He said you would answer it. Now I want to read to you this letter of complaint:

“Brooklyn, *June 9, 1916.*

“Hon. Frank Moss,

“Counsel Legislative Investigating Committee.

“Dear Sir:

“I beg to call your attention to an outrageous condition that exists in Bath Beach, Bensonhurst and also in the Ulmer Park section as a result of the discontinuing of the West End train service.

“That this could be done with the consent of the Public Service Commission or its engineers after having been prevented on two occasions seems impossible.

“I don't think you could perform a greater public service through your committee than by taking this matter up and exposing those responsible for the present conditions.

“The facts of the case in chronological order are as follows:

“About June 1, 1915, it was discovered that the B. R. T. was, without due notice to the public, about to discontinue the train service on the West End line and substitute a

trolley service. This line was probably at that time carrying as much or more traffic than any line leaving Park Row. A meeting of several civic bodies was called and a demand was made on the Public Service Commission for a public hearing to protest against the proposed change. This demand was granted. June 8, 1915, was the date set for the hearing which was attended by more than 300 people.

"The reason given at that time for the proposed change was that it was necessary to grade and pave New Utrecht avenue. The engineers of the Commission concurred with those of the B. R. T. It was proven at that hearing that it would be impossible to carry the traffic by trolley cars. The Commission ordered the train service continued. I would suggest that you get a copy of the minutes of this hearing which will show that if it were not for the vigilance of a few men the B. R. T., with the consent of the Public Service Commission, would have been successful in an attempt practically to assassinate this entire district.

"On October 6, 1915, another attempt was made to discontinue this train service. The excuse given this time was that it was necessary to remove the bridge over the Thirty-eighth street cut which was used by the West End trains, the engineers claiming it would be impossible to raise the bridge and there was not head room enough for trains to pass under it. The contractor, Mr. Frederick Ward, a brother of the Democratic leader of this district who has the contract to '*furnish the labor*,' to lay the ties and rails on the new elevated structure from this point, held that he would be unable to get his material through in order to continue his contract unless the bridge was removed. Mr. Turner, one of the engineers of the Public Service Commission, very ably supported the contractor in his contention. The minutes of this hearing will show how easily the problem was solved by a man who lays no claim to any technical engineering knowledge whatsoever. Again the B. R. T. was ordered to keep their trains running until the service on the elevated line was installed.

"Without a public hearing on this matter about June 1 the train service was discontinued between Ulmer Park and Coney

Island. The only service now between Ulmer Park and Coney is by trolley.

"Before the train service was discontinued it was possible to go from Borough Park, Bath Beach, Bensonhurst and Ulmer Park to Sea Gate for a single fare by making one transfer. Now you pay two fares and are compelled to make two transfers, one at Ulmer Park and one at Coney.

"The trolley line operating in this district is known as the Thirty-ninth Street Ferry Line, and runs from Thirty-ninth street in Brooklyn to Coney Island, and it is the only single fare line to Coney Island.

"For the past five years service on this line was so poor that it was of no use to anyone in this section. These cars are crowded long before they reach Bath Beach and it is impossible to board one. It has been the custom to run them on a schedule without regard to the amount of traffic. I have seen a car loaded with a hundred passengers stand for several minutes waiting for its schedule time leave while the following cars would pull in, discharge their passengers and be loaded with a hundred passengers each, before the car on the stand would leave. This would continue for hours on Sundays and holidays. This could be readily checked up by the records of the inspectors and the conductors' reports. Now this already overtaxed line is given the additional West End line traffic. If it is allowed to continue it means that the people in this section will be denied a service they are justly entitled to and the officials whose duty it is to protect them are grossly incompetent or wilfully negligent.

"It seems to me that a body like the Public Service Commission, which was created for the purpose of discovering and correcting evils of this kind, have no right to put that burden on anyone else and if they had the inclination to do so would be able to prevent such rotten conditions as now exist.

"I am,  
Yours respectfully."

Now, what can you say about that? A. The West End trains were discontinued between Ulmer Park and West End Terminal

by reason of a contract with the contractor who was building the Coney Island Terminal. The contract originally provided that. The city line which was considerably back in their work wasn't completed as early and we got a two months' extension of the contract which expired on June first, at the time the line was discontinued into Coney Island.

Now the statement that the people from Borough Park and that vicinity are required to pay two fares, is not so. They have a transfer to the Sea Beach line and people from that vicinity get down for one fare. The people at Bath Beach also get the same, but if they want to transfer to Northchester and go to Sea Girt, then they do have to pay an additional fare.

Q. Well, twice the public service commission under such circumstances as you have mentioned ordered the resumption of traffic. A. You are in error.

Q. Is the writer of this letter in error? A. He is in error. That is from Thirty-ninth street to Coney Island, which would make it necessary for the trolley lines replacing that elevated service to take care of all the passengers on that line. The Commission didn't grant that request but they did approve the contract which provides for the building of the Coney Island Terminal and which provides for the discontinuance of the trains in there after June 1.

Q. What relief is in sight for these people? A. What relief?

Q. Yes. A. Why, the West End Line gets the exact same service they formerly have gotten except that the trains don't go beyond Ulmer Park and the number of passengers using the West End trains between Ulmer Park and Coney Island are very, very few. People going from New York to Coney Island use either the Sea Beach express line and the Brighton Beach line and by doing that they cut the train time about in half.

Q. Now, I have another letter:

"To the Public Service Commission for the First District,  
New York City.

"Gentlemen:

"Your attention is respectfully called to the following complaints against the Brooklyn Rapid Transit Company (popular title for the parent and subsidiary companies) and we ask that you set an early date for the hearing of same:

" 1. The B. R. T. last week discontinued the elevated train service between Ulmer Park and Coney Island. This service has been in operation for many years. We claim that the company is not giving an adequate service by trolley cars to replace the elevated service.

" Moreover the B. R. T. is not giving a transfer from the trains to the Norton Point Line — Seagate — which it did until it discontinued the train service thereby compelling the passengers to pay ten instead of five cents to Seagate.

" 2. In relation to the Sea Beach service —

" The company is not giving an adequate service to Coney Island. Instead of running all trains to Coney Island it stops half of them at Kings Highway, three stations away, and makes that a terminal or dumping off station.

" 3. The lighting system on the entire line is inadequate and is harmful to the person, who reads by it.

" 4. The practice indulged in by the company of turning out the lights entirely between Twenty-second avenue and Coney Island stations is a pernicious one, niggardly, harmful to readers and inconvenient to passengers.

" 5. Lights are turned out during certain parts of the day at Pacific street, Canal street, DeKalb avenue and other stations and persons waiting for trains are unable to read without straining their eyes.

" Respectfully submitted."

Now, what can you say about that? A. The stations are four hundred fifty to five hundred feet in length. The traffic on that line is so slight that during most hours of the day we can operate one and two car trains. We don't light up the entire platform as well as we do the particular part of it where the car makes the stop. On the ends of the platforms we reduce the lighting.

Q. That is all you have to say about this letter? A. I can't say anything more. I will say anything else you want to ask about.

Q. I will go further with this communication:

" The P. S. C. suggested the other day to the B. R. T. that they stop the through Coney Island Express trains

operated on the Brighton Beach line, at Church Avenue, and at Kings Highway, as the Sea Beach line could handle all the through traffic to Coney Island.

"The Brighton Beach line receipts are not shared with the city.

"The Brighton Beach line has been the most popular line to Coney Island, and has carried the largest share of the traffic.

"The Sea Beach line receipts are shared with the city."

Is that true? A. Why, as I understand it, all lines are being shared with the city at this time.

Q. Is this all true? A. What part of it?

Q. Did the Public Service Commission suggest that the B. R. T. stop their through Coney Island Express trains operated on the Brighton Beach Line at Church Avenue and Kings Highway? A. They did.

Q. Upon the ground that the Sea Beach line could handle all the through traffic to Coney Island? A. Yes.

Q. Are the Brighton Beach lines shared with the city? A. I don't know for sure. I think they are.

Senator Thompson.—When was it that you complied with the request? What date was it? A. About two weeks ago, I should say.

Q. The Brighton Beach line has been the most popular line to Coney Island, and has carried the largest share of the traffic. What do you say to that? A. That is true.

Q. Are the Sea Beach line receipts shared with the city? A. Yes.

Q. Are the Brighton Beach receipts shared with the city half and half? A. Yes.

Senator Thompson.—Is the city getting it now? A. Yes.

Q. (Mr. Yeomans.) How much deficit is the city running down there? A. I think about forty thousand dollars a month.

Q. You are not wasting anything are you? A. We are not wasting anything. I think the city is operating as efficiently as possible.

Testimony of MR. ALFRED S. CRAVEN, examination by Mr. Shuster. (Formerly sworn.)

Q. (Mr. Shuster.) You are the Chief Engineer of the Public Service Commission for the First District? A. I am.

Q. And one of your duties under the city contracts for the subway is to determine what items of expenditure by either the city or the company shall be included in the cost of construction and equipment? A. That is one of my duties, yes, sir.

Q. And in pursuance of that duty you have made determinations from time to time? A. I have.

Q. For the New York Municipal Railway Corporation and the City in contract Number 4? A. I have.

Q. You are familiar with the so-called prior determination under contract Number 4? A. Yes, sir.

Q. And that determination was made by you about November 24, 1913? A. As I recollect it.

Q. What did you do in regard to this determination and particularly, what part did you personally take, aside from signing your name to the determination? A. I discussed the different items with the parties who had the matter in hand, who looked them up.

Q. Will you state who? A. Principally with Mr. Turner and Mr. Harkness.

Q. Mr. Turner is your assistant and Mr. Harkness is assistant counsel? A. He is my assistant, yes.

Q. Did you inspect any original vouchers or evidences of payment? A. I did not inspect the vouchers, no, sir.

Q. That was done by some of your subordinates? A. By my subordinates, yes, sir.

Q. And you relied upon their investigations? A. I did.

Q. And aside from consultations with your subordinates and one of the counsels of the Commission you did little or nothing else but sign your name to the certificate? A. Yes, that is all.

Q. Are you at all familiar with the gross items that went into that determination? A. I was at the time I made it. I was fairly familiar with it, yes, sir.

Q. Well, now I will show you a copy of the determination which is our exhibit No. 2 of June 16, and I will refer to page



44. What knowledge have you of any of the items and details of that allowance? A. Only a general knowledge. That was taken up, my recollection is, by Doctor Webber.

Q. And you have no personal knowledge of the items constituting that bill? A. Only as they appear on the face of the bill.

Q. Did you know how they were arrived at? A. My recollection is, this is a bill that was presented by the B. R. T. Company to the New York Municipal Railway Corporation and it was itemized to the extent shown here.

Q. And Doctor Webber's approval of that bill was the basis of your acceptance? A. It was.

Q. Did you talk with any of the commissioners about that? A. I can't recall about this particular bill.

Q. Did you receive any instructions from the Commission in regard to it? A. Not in regard to this bill.

Q. Did you talk to any of the officers of the New York Municipal Railway Corporation or the B. R. T.? I can't recall having done so. I possibly might have.

Q. Do you know whether the administrative salaries, fifty thousand dollars to T. S. Williams, etc., whether there are any vouchers submitted to Doctor Webber or any of your subordinates in support of those items? A. I can't recall now. My impression is that there were vouchers for those items. I can't say. I would have to go back and go through this matter all over again to find out.

Q. Don't know anything about it? A. Not at the present. I can't recall those items now, no, sir.

Q. Then you don't know that those administrative salaries are lump sum estimates or amounts? A. I can only say that at the time I made this determination I was familiar with the conditions and I was satisfied that they were reasonable and correct. I can't state now just what the details were.

Q. What is the method you pursue in your rendering a determination? A. I discuss the matter as I said, with the men, my assistant, Mr. Turner. It all goes through Mr. Turner directly as it comes to me. I discuss the matter with him and where there is a legal question, I discuss it with Mr. Harkness.

Q. Do you know what Mr. Turner's method is in arriving at a result? A. In a general way. He has a corps of accountants there

who examine the books of the company. They examine all of our accounts on the part of the city and it finally comes to me through Mr. Turner, who informs me of any questionable items at all and we discuss them and finally draw the conclusions upon which the determination is based.

Q. Do you familiarize yourself upon the data that Mr. Turner and your other assistants give you? A. Only in a general way, some principles.

Q. What do you mean by that? A. I mean to say that if there is a certain amount to be charged to construction on account of the city or the company, the matter is discussed as to whether it is a principle of profit charges and if they are, the accountant goes through the books and reports to Mr. Turner and it comes to me.

Q. Can you recall any specific example of what you are endeavoring to explain to us? A. No.

Q. Well isn't it a fact, Mr. Craven, that so far as these determinations are concerned, that unless Mr. Turner or some subordinate calls your attention to some specific matter you never pay any attention to the details? A. No, sir, I generally look it over and I would ask a question. It is impossible, Mr. Chuster, for me to go through hundreds and hundreds of pages of calculations and vouchers to find out about it.

Q. I am not criticising in my questions. I want to know the method.

I am going to ask you to turn to page 46, I think it is, of that manual. Is that the page that has to do with the interest? A. Interest, yes, sir.

Q. Now, do you know how that amount of two million and some odd thousands of dollars there was arrived at? A. Which item do you mean? The two million three hundred ninety-eight thousand dollars?

Q. Yes. Now, how was that arrived at? A. I don't know just exactly what details were gone through?

Q. Can you tell me what is meant by the first item in that bill? A. You mean the forty million dollars?

Q. That is what I am asking you. A. The six per cent. interests paid on forty million dollars, par value five per cent. notes.

Q. What does that mean? A. Why, that was money that was borrowed by the Railway Corporation to finance —

Q. Which Railway Corporation? A. The Municipal Railway Corporation.

Q. They borrowed that? A. They borrowed that.

Q. Do you know when the New York Municipal Corporation was incorporated? A. I do not.

Q. I will tell you, September 13, 1912.

From whom did they borrow that forty million? A. I don't know.

Q. Did you ever know? A. Well, I believe I heard at the time they borrowed it from some financiers in Wall Street.

Q. You will be surprised than if I tell you that they borrowed it from the Brooklyn Rapid Transit. A. I don't know.

Q. That bill was rendered by the Brooklyn Rapid Transit Company to the New York Municipal Railway Corporation, was it not? A. Yes.

Q. Can you tell me how the item of one million nine hundred ninety thousand eight hundred dollars is determined and how you determined that to be a proper item? A. I determined it to be a proper item because the matter of this item was generally discussed, as I understand it, by the Commission at the time and by our counsel at the time and while there seemed to have been some difference of opinion as to the proper amount or proper charge, it was finally taken up and under an agreement or stipulation as to the proper interpretation of the contract in respect to this particular payment was entered into between the corporation and the public service commission.

Q. Was it the amount of that item that was under discussion and objection? A. Well, I can't say whether it was the amount or whether it was the principle of the item; that is, whether it was a correct interest charge. Now, I will tell you very plainly, I was governed entirely in my final determination of this item by the resolutions of the commission.

Q. On June 30, 1913? A. That is what I based my determination upon.

Q. And you took that resolution as a express direction to you to accept those items? A. Well, not direct to me, but it was sufficient to satisfy me that I should follow that resolution which authorized the proper authorization for me to determine that as the proper amount to be charged.

Q. Now, which is paramount in authority as to determination, you or the commission, under the contract? A. In a case of this kind the commission, I would consider, is paramount. I couldn't act otherwise. This is a resolution of the commission legally interpreting the contract and when I received that with the stipulation I had nothing else to do.

Q. Well, what particular clause or provision of the contract does that resolution interpret? A. I can't recall.

Q. Had it to do with discount? A. No, this had to do with interest.

Q. With interest? A. Very frankly, as an expert accountant to determine those things, I am not competent. I have to be guided by the results and experience of others who make a specialty and who are employed to do that work.

Q. Well, did you know that that was a price or an amount that was deducted from the principal of the bonds by the buyers? A. No, I didn't go into that part of it.

Q. Didn't go into that? A. No.

Q. So that you don't know whether it is discount or interest of your own knowledge? A. Well, not of my own knowledge. I presume, from the advice I received, that it was a proper interest charge.

Q. Well, was it? A. It was taken up by Commissioner Maltbie, whose advice I feel was very profitable for me to follow.

Q. So you place the thing on Commissioner Maltbie and not on the action of the Commissioners. But so far as your action was concerned you were determined in this matter by the approval of Mr. Maltbie? A. I believe that Commissioner Maltbie was a capable man to determine a matter of that kind and I was governed largely by his views in the matter.

Q. Is Commissioner Maltbie a lawyer? A. I don't know just exactly what he calls himself.

Q. If it needed interpretation at all it needed a law interpretation, did it not? A. Well, he is supposed to be a man who is familiar with matters of that kind. I was governed in the matter by that resolution. I considered that that was a proper authority for me to make my determination.

Q. You didn't believe it was any part of your duty to go counter

to that resolution? A. If I had any reason to believe it was wrong I might have gone counter to it.

Q. Do you recall a memorandum that was prepared for you by Mr. Turner your assistant? A. I think he advised me against it.

Q. Do you recall for what reason? A. Well, he questioned whether it was a matter of interest.

Q. Well, you evidently differed with him. A. I did not differ from his point of view. I explained as well as I could, Mr. Shuster, that there was some difference of opinion, but when it was finally taken up by the board and by the other party to the contract and they agreed that it was a proper item to be allowed. They interpreted the contract, in other words, and under that I didn't see that I had any other position to take from the one I did. I may have been wrong, but I didn't feel so and don't feel so now.

Q. You knew as a matter of fact that in no event could you allow a greater discount than three per cent., did you not? A. That was a discount, yes, sir.

Q. So if Mr. Turner and Doctor Webber, who both disapproved of this, as you doubtless recall, if they were right and it was a discount, didn't you feel that you might be violating the terms of the contract? A. At that time there was a doubt in my mind as to just what this could properly be charged, but after all the discussions and after the action of the commission and the company and their interpretation of the whole matter, I thought it was perfectly proper that I couldn't do otherwise than to do as I did.

Q. So that, as a matter of fact, you approved this determination so much against your own judgment? A. No. I tell you that as far as my own judgment in this matter is concerned, in this accounting I am not an expert.

Q. Well now, you had a doubt as to the propriety of this item? A. When it was first presented, yes.

Q. Well, did you at any time later? A. No, when it was finally determined by the commission and by the agreement between the contracting parties that that was the proper interpretation of the contract, I accepted it. I couldn't do otherwise.

Q. So that in making this determination you did not exercise your own judgment at all but obeyed the instruction as you con-

sidered it to be? A. I used my own judgment only to the extent that I believed that what they did was proper or they wouldn't have done it and their judgment in that matter was probably better than I could have had on either side of the question, while I might have been at the first in doubt as to which was right and which was wrong and my final conclusion was that this was the proper thing to do.

Q. Let me read to you to refreshen your recollection from Mr. Turner's memorandum prepared especially for you and for your guidance. He says:

"My only purpose in objecting to the program which we followed was to make the record show a consistent disposal of the matter. You were not a party to the conference."

He is talking to you now.

"The instrument for your guidance in your determination was the contract and if the contract did not clearly stipulate that such prepaid interest was to be allowed I thought it proper that you should make a determination which excluded it and permit the company to appeal and thereby allow the matter to be decided upon its merits by the Commission with full knowledge of the facts."

A. Yes.

Q. What was it that overruled this very excellent and safe advice? A. I can't recall the specific instance, but that little subject was still under discussion and as I say, it was finally taken up by the contracting parties and the result of their conferences and their determination or their action in the matter was this resolution on which I based my determination. Now, I can't say if I was wrong and if I was right I feel that I did the proper thing.

Q. That is you did the proper thing in following that interpretation? A. In acting on that resolution, yes.

Q. What was your opinion as to the propriety of that item? A. I was going to say that my opinion at the time was rather clouded. I did not know exactly which view to take of it personally, and finally like a great many of us have opinions, when a matter is opened up for discussion and there must be some final conclusion and the final conclusion that governed me in my ac-

tion was that resolution of the board and the stipulation that was agreed upon as to the proper interpretation of the contract. I can't make any other defense. If a defense is necessary I can't make any other statement that is clearer than what I have given you, Mr. Shuster.

Q. You knew, did you that the notes that were issued and upon which this prepayment of interest was charged were five per cent. notes, did you not? A. I recall it now. I must have known it at the time.

Q. And you knew and had before you in your determination that they had received their five per cent. interest allowance also? A. I want to say that whatever I knew in reference to these details and whatever I thought did not guide me finally. What guided me finally was the final agreement and resolution of the board.

Q. So that as to the propriety of the items in this determination, as to their legality, as to their amount, you did not exercise any independent judgment whatsoever? A. Well, I will say I did not. I could not. I want to state as I have stated before, that there was a large difference and there is still a difference today amongst these many experts as to the propriety of it and I am not a competent accountant myself, and therefore, I had to be governed by the final action of the Board in this matter.

Q. The courts will have to decide this matter. A. I wish to correct that last answer of mine that I didn't act in any way on my own judgment. My own judgment was that the final action of the Board was the proper thing for me to be governed by.

Q. You mean that you conceived the action of the Board to be a proper action? A. I did. I couldn't question their action.

Q. And as such any independent judgment adverse to their opinion or to their resolution you lost sight of? A. I did not consider it.

Q. So that you did not exercise any individual? A. I did not consider about my own judgment in the matter.

Q. But you did not exercise any individual judgment with regard to the propriety, legality or the amount of the items allowed? A. My individual judgment was governed by that action of the Committee. I must have something to govern my individual judgment.

Q. You did what you are told to do? A. I did what I considered proper, not what I was told to do. I wasn't told to do anything. There was the resolution of the Board. That was presented to me and with that resolution before me I acted in accordance with that resolution.

Senator Thompson.—Is there any record in the department where Mr. Craven refused to put something over that put up to him? A. I don't know of any particular item, but there are a great many items.

Senator Thompson.—I mean you, by you as Chief Engineer, on the recommendation of somebody in the department. Did you ever turn anybody down? A. I can't state.

Mr. Shuster.—Mr. Chairman, I think Mr. Craven wrote a letter sometime ago putting forth all his history. A. (Continued.) I can't recall all I have done in the last three or four years. I can't recall.

Senator Thompson.—But I mean you individually. A. If I am individually responsible for that then I am individually responsible for the things that are turned down through the same sources.

Senator Thompson.—But I am getting at your own original action based on your own initiative as against recommendations made to you by your subordinates or others. A. I can't recall whether I have or not.

Q. (Mr. Yeomans.) You are the final determiner, are you not, as to these determinations? A. Yes.

Q. Under the contract? A. Yes.

Q. You have to get expert advice on engineering and accounting before you can come to your final conclusion, do you not? A. Of course I do.

Q. You have to take that from the experts employed by the Commission? A. I do.

Q. And until these instances you have had such advice? A. I have had advice.

Q. And finally when you make the determination, that is made upon your own judgment after considering the advice given to you? A. That is the way it is done.



Q. And after, therefore, this conference and after hearing all of this advice as to these items that Mr. Shuster has referred to, this interest item, it was your own conclusion, was it not, that that was the proper thing to do to allow that interest? A. Why, absolutely so.

Q. (Mr. Crummy.) Were you at the conference the counsel refers to? A. No, I was not at the conference but I received the results of that conference.

Q. You received the results of that conference through Mr. Turner who advised you against it? A. And through Mr. Harkness.

Q. Mr. Craven you have already testified that you included that interest item and were guided principally by the action of the Commission in that resolution, dated June 30. A. Yes.

Q. You knew, did you not, that interest item was contended by the Municipal Railway Corporation as a proper charge? A. Yes.

Q. They contended that it should be included? A. Yes.

Q. And the resolution of the Commission dated June 30, you regarded the contention of the Commission, that it should be included as a proper item? A. Most certainly.

Q. And you regarded, therefore, the actions of the parties to the contract as the people who might properly interpret the provisions of the contract? A. Most certainly I did.

Q. And in the absence of any good faith you considered that their agreement on this item should be allowed in your determination?

Senator Thompson.—I want you to underscore that, "That this was done in the absence of any good faith."

Q. You have also made other determinations known as quarterly determinations? A. I have.

Q. Can you tell us upon what theory you allowed the twenty thousand dollars of special compensation paid by the New York Municipal Railway Corporation to its counsel for services rendered prior to March 19, 1913? A. The only thing I can say is this: that the contract provides that such payments shall be made and I considered that after consulting that that was a reasonable amount.

Q. Why didn't you allow it in the prior determination instead of the first quarterly? A. That must have been another charge.

Q. Do you know anything about it? A. I probably knew about it at the time.

Q. What? A. That was a long time ago that I made that determination. I probably knew about it then.

Q. Did you know that the city has brought action against the Brooklyn Rapid Transit Company to compel a re-determination of the allowances of those items? A. I understand such is the case.

Q. And yet in the first determination you allow items for services rendered prior to the contract. Did you know that you were doing that? A. No, I don't think I did.

Q. Well, it is the fact. A. If there was there is some way of accounting for it.

Senator Thompson.— You mean you can find some excuse for it? A. I mean to say that these are matters that I can't recall now and it is impossible without going into it to say.

Senator Thompson.— The idea here is this: your administration goes on the theory that anything that the ingenuity of the human brain that a lawyer or engineer can advance that serves as an excuse for taking any action in favor of the railroad, why that makes it legal. In other words, it can't recover on the preponderance of the testimony? A. No.

Senator Thompson.— I don't know then.

Q. (Mr. Yeomans.) You also know that you allowed over two million dollars of the same items to the city, do you not? A. Yes.

Mr. Shuster.— Our position on that is that the city hasn't any more right to an improper charge or allowance here than the company.

Senator Thompson.— As long as the city is holding the bag anyway, you might just as well make all the allowances you can.

Mr. Yeomans.— They went back nine years and charged counsel fees and others as administration charges

Recess until 2:30 P. M.

## AFTERNOON SESSION.

Meeting called to order at 3:00 o'clock. Senator Thompson presiding.

Testimony of MR. ABEL:

Examination by Mr. Shuster. (Witness previously sworn.)

Q. Mr. Abel, both of us having had an opportunity to sleep on it, I would like to know whether you are still of the same stubborn opinion that this was interest and not discount? A. I think that I can probably enlighten you a little on that proposition by calling attention to the paragraph that you called my attention to yesterday; namely, debt discount and expense.

Q. Yes. Well, we are all here for instruction. A. Debt, discount and expense referred to in the contract relates to the debt, discount and expense of the securities of the New York Municipal Railway Corporation. We couldn't charge to that account anything, either prepaid interest or debt, discount or anything else in respect of any other corporation's debt, not if we wanted to regardless of the subway contract or anything else.

Q. No. So that the only place that you can possibly hope to get it in was through the interest item. A. The place where we did get it in was under interest as the contract provides.

Q. Now I take it that you are an expert accountant? A. Well, I don't characterize myself that way.

Q. And are more or less familiar with the meanings of the terms used in accountancy? A. Yes, sir.

O. Both from the standpoint of the account and its legal effect. In order to get our record straight I have brought with me some of the authoritative statements on this proposition by experts recognized by accountants generally. We will see whether or not we can't get together in our agreement of terms. A. Well, may I interrupt you just a moment?

Q. Yes. A. During the subway negotiations a rate of six per cent. was discussed and if you will turn to chapter forty-nine of the contract under the rental provisions you will find that in the event of temporary operation the lessee is permitted to deduct—

Q. You say chapter forty-nine? A. Article forty-nine, chapter two, I should have said.

“In the event of temporary operation or commencement of the term of the lease prior to the completion of the railroads.”

Q. Now what section are you reading from? A. Section seven, page sixty-three.

It provides that the operator shall deduct for the quarterly period one quarter of six per cent. contemplating a six per cent. interest charge. If your contention held good as to this prepaid interest being chargeable as debt, discount and expense and therefore, excluded because of the limitation of three per cent. on the company's own debt, the company while permitted to deduct six per cent. on operation would be making a profit because it would only have to pay five per cent. interest on the notes outstanding and pursuant to this contract would have to turn back the one per cent. It was the fear that there would be a possible profit made that caused Doctor Webber to demur in his approving to the extent that he had to approve, the allowance of this prepaid interest at one time instead of permitting it to be deducted or included by the Chief Engineer in his determination every six months as the interest accrued. That was his only objection.

Q. Now, this six per cent.—A. Wait just a minute, I would like to add to that as evidencing the intent of the parties that Colonel Williams in his report to the stockholders under date of June 30, 1913, in which he set forth briefly the terms of the contract made with the city, states: “Under the terms of the lease the annual net revenue remaining after operating expenses, taxes and provisions for depreciation, is to be applied in the following order:

“1. To the lessee three and a half million dollars as representing the net earnings of the existing railroads which are to form part of the new rapid transit system. Out of this reservation the lessee is to pay interest charges on capital investments prior to March 19, 1913 in the existing railroads.

“2. To the lessee six per cent. on its new investment in construction and equipment prior to the beginning of permanent operation and thereafter interest on one per cent. sinking fund.”

Q. There is no question that that is a reasonable explanation of the contract. A. The definition as to the interest in the contract reads: "Interest actually and necessarily paid or accrued on moneys provided by the lessee or on its behalf from time to time for the items of this definition from the respective times of providing said moneys, but not including interest on any moneys provided by the lessee or on its behalf prior to October 1, 1912."

Now, if you turn to the definition of interest on page eight you will find that the city is permitted also to include interest but is not restricted as to October 1, 1912, but can go back for ten or twenty years of this time if necessary, if it can show that it is spending.

Q. Which is not improper at all for the city was developing this matter, spending money in what became a joint enterprise, months and perhaps years before the Brooklyn Rapid Transit was in any wise interested. Now, the definitions which you have read as to what shall be deemed interest are all of them referable back to the main definition as to construction in the same instrument because it is only in and about construction that any of the items contained in the definition of actual cost apply. A. I would like to amplify what I have said by stating.

Q. Well, is not that true? A. Well, I think you couldn't have any better evidence than the contract itself as to the definitions. That is what I am going to give you.

Q. Well, we have got the contract and every phase of it in the record. A. While these negotiations were on some criticism was made as to the amount of interest that would pile up against the cost of construction or equipment by reason of the financial arrangements that had been entered into and it was in recognition of that fact that the company agreed to credit against the cost of construction and equipment the sum of one million three hundred thirty thousand dollars.

Q. When earned. A. Very true, nevertheless credited.

Q. It is a very grave and big distinction that, "When earned." A. You presuppose.

Q. I can't let you take the progress of this examination out of my hands and I wish you to understand that. A. I don't want to do that.

Q. So I am going back now to what you started with and direct attention to page sixty-three of the contract.

To start with, is it not a fact that the million nine hundred ninety thousand eight hundred dollars in that item are the result of a contract had between the New York Municipal and the Brooklyn Rapid Transit? A. That is in connection with the raising the money.

Q. And it is only by reason of that contract between those two corporations that you could have by any pretext made any claim whatsoever for that item? A. That is the foundation.

Q. Yes. Now let us go back to your contract:

“In the event of the temporary operation of the railroad or the commencement of the term of the lease prior to the completion of the railroad, such one-quarter of six per cent. shall be computed upon the basis of the portion of the lessee's contribution toward the cost of construction of the railroad.”

The lessee's contribution is dependent entirely on the amount of its expenditures determined and allowed by the Engineer, is it not? A. Yes, sir, for all the elements of construction.

Q. Now then, if the engineer had disallowed that item it would not have affected the city to increase its interest would it? A. It would have reduced the cost.

Q. It would have reduced the cost and wherever the cost is increased it is to your interest then and then you get the one-fourth of six per cent. on that? A. On whatever it costs.

Q. So than it is to the interest of your company to get its costs allowed at as high a figure as it possibly can, isn't that true? A. It is to our interest to get our costs allowed at anything beyond the actual costs in that we are limited to and in that we have respected this.

Q. But without the private contract entered into first between the Brooklyn Rapid Transit and its bankers, where the expenditure was incurred and made by the Brooklyn Rapid Transit and without the private contract between the Brooklyn Rapid Transit Company and the New York Municipal Railway Corporation, both of which contracts or neither of which contracts had the city any interest in or concern about, you could not have had that item allowed? A. Why do you call them private contracts?

Q. What interest had the city in them? Weren't they contracts between private corporations and private individuals? A. Those contracts were submitted to the city authorities before the contract was entered into.

Q. We understand that. A. Well, the contract that you are referring to, in the definition of interest on moneys borrowed on behalf of the lessee, the makers of the contract had in mind the existence of this contract of October 1, 1912. We didn't go into the thing with our eyes shut.

Q. That is your claim. A. That is the fact.

Q. Now then the city representing the public interests in order to be fair, was entitled to know and have referred to it, in its final contract. A. It was referred to.

Q. Where? A. It was borrowed in behalf of the lessee. There is nothing secret about it. It was an open book.

Q. Does that confine it to any particular moneys that were expended? A. Moneys that were in behalf of the New York Municipal are includible according to our intention under that contract.

I had something to do with that contract. You had nothing to do with it. You are undertaking to tell me what it means.

Q. You know what you want it to mean. A. I know what it means, and you are trying to put a different interpretation on it.

Q. No. A. You are trying to put an interpretation on it that would deny us these things.

Q. Not at all, the city has no responsibility for the fact that you sold your paper at a discount. A. I understand that the city hasn't any responsibility for the Brooklyn Rapid Transit mortgaging ten millions of its assets too.

Q. Did your company have any contractual relations whatsoever with the city of New York on the date that you incurred and paid the obligation to the bankers aggregating one million nine hundred ninety thousand eight hundred dollars? A. No, sir.

Q. That answers it.

Now, you ask the city to give you an allowance for that. You could have gone out on the same theory and made any number of contracts and then asked to have them allowed. A. If they were reasonable.

Q. If you could have gotten the interest? A. We shouldn't

ask the Commission to interpret anything in this at variance with the contract.

Q. Well we think we have pointed to, not a single dollar, but to a million nine hundred ninety thousand eight hundred dollars.

A. That doesn't make it so.

Q. You are entitled to it only if it is interest. A. That is what it is.

Q. If it is discount you are not entitled to it. Answer that yes or no. A. We are entitled to any moneys that the Brooklyn Rapid Transit incurred.

Q. If it is discount you are not entitled to it, are you? A. We are entitled to it whatever it is.

If it is discount of the New York Municipal, no, but it isn't discount of the New York Municipal.

Q. Could you have asked the cost of your money as an allowance against construction to exceed three per cent. of the face of your bonds? A. Yes, as to money borrowed by a third party.

Q. By the terms of the contract? A. Yes. Read the definition of interest and I think you will agree with me.

Q. Well let us see, you have got your three per cent. because you sold your bonds at ninety-seven and you are entitled now to charge against construction and are charging it gradually to the extent of a million nine hundred thousand, are you not, on your sixty millions? A. Yes, sir. The contract gives us that.

Q. The contract gives you that? A. Yes, sir.

Q. And no part of that is included in this million nine hundred ninety-eight hundred dollars? A. No, sir.

Q. Now, in addition to that your bond fixes the term of interest at five per cent., does it not? A. Yes, sir.

Q. So that anything over and above five per cent. can not be interest within the terms of the contract? A. Well, what are you talking about now? Are you talking about the allowance?

Q. I am talking about what the engineer may allow you as a proper interest allowance. A. The engineer may allow us any cost of getting money — I will put it that way, which the Brooklyn Rapid Transit incurs as agent of the New York Municipal.

Q. Then why didn't they allow you the six hundred thousand you paid the brokers for getting the money? A. I will explain that to you.



Q. It is the same thing. You don't need to explain it. Isn't that a part of your cost? A. We have never asked to have it included.

Q. Well, before you asked for a stock issue.

Mr. Yeomans.— We had a conference with the lawyers.

Q. I don't want your explanation. All right.

Mr. Yeomans.— And with the accountants of the Public Service Commission on those items. Among them was included the six hundred thousand.

Q. Yes.

Mr. Yeomans.— But they were determined that they were not chargeable to cost of construction and we applied to have the stock issued and they carried.

Mr. Abel.— They contended that Colonel Williams in conference wouldn't have those included. They kicked about the bankers fees, eighty-five thousand dollars.

Q. But you were willing to have it allowed? A. We were willing to have it allowed. We never expected to have it allowed.

Q. Why did you submit it then? A. In order to have a stock issue.

Mr. Abel.— That isn't so.

Q. It was before the engineer for the purpose of determination? A. No, sir.

Mr. Yeomans.— We submitted all those bills that we should have to issue stock for and that was the result and then we applied to have a stock issue to cover this one per cent.

Q. Tell me, Mr. Yeomans, why is it necessary for you to talk anything over with the Commission so long as your contract specifies what you are entitled to?

Mr. Yeomans.— The point was, we had a lot of items there that were in doubt, which they finally allowed.

Q. Why should they be in doubt?

Mr. Yeomans.— You have to talk over with these people a great many things that we all finally concluded were right or wrong. The way of coming under these determinations, as a matter of fact, some of these quarterly determinations before they were formally taken up have been submitted so we could look them over and so we could have conferences to see whether certain things should stay in or out so as to avoid arbitration.

Q. Do you mean to say that the companies and the public service commission and the experts of both are unable to determine except by conferences what it is proper to charge under this contract?

Mr. Yeomans.— There were certain items that both parties had looked into and the commission said to go to our lawyers and our accountants and talk them over first and then we will have a conference about it.

Q. Now, just to repeat one thing, Mr. Abel, if that million nine hundred ninety thousand eight hundred dollars allowed you in prior determination — A. You put your question without shaking your pencil.

Senator Thompson.— The Chair holds that he can shake his pencil.

Q. Unless that item is interest you were not entitled to it, is not that true? A. We were entitled to it whatever it was.

Q. Answer my question yes or no. If that is not interest, within the meaning of the contract, then you are not entitled to it, are you? A. I am not going to answer or give you any legal version of that contract. The contract speaks for itself. You disregard what I say. Now you take your own interpretation.

Q. You say this is interest? A. I do, yes, sir.

Q. Our contention is that it is not interest but discount and, therefore, illegal and improper.

I now, Mr. Chairman, ask permission to read from Montgomery Rollen's Works, "Money and Investments," which is a standard authority among accountants and investors and bankers in this city and all over the country.

The definition of discount is discussed in this work at page 139:

“Discount; the percentage or price of a security below its par or face value. Take the face value of one hundred dollars a share of stock selling at ninety-five per cent. or five dollars per share discount. The par value of various securities differ, however, therefore, it is not argued that because a share of stock is quoted at ninety-five it is selling at a discount, for, if by chance, the face value of the share happens to be fifty dollars it would not be selling at a discount but at a premium of ninety per cent.”

Now later on in the definition more or less illustrative it says: “A note is discounted when the interest upon the same is deducted by the lender from the amount loaned” and that is what you did in this case isn’t it? A. I have answered the question. I told you what we did.

Q. Well, I want you to answer that question.

Senator Thompson.—You can answer that question.

Mr. Moss.—Isn’t that what the cashier of a bank does when he gets a note? A. The borrower prepays the interest. He can call it anything he wants.

Mr. Moss—I have dealt with a bank but it wasn’t called that.

Q. That is, the borrower pays the interest in advance. Is there anything different in that and what you did in this case?

“This amount of interest prepaid by the lender is called the discount or bank discount. The amount of money which the lender obtains, that is, the face of the note, less the discount is called the proceeds or net avails.”

It was the proceeds or net avails that you received from the bankers, was it not? A. Yes, sir.

Q. Now you know as a matter of fact don’t you, that the large banker, I guess all the banks in New York city, have a discount department and discount clerks, whose duty it is to look after these very items of discount and the records there, and the handling of the transactions. They also have a separate department to look after the interest. A. They make the borrower pay the interest in advance.

Q. Did you pay the whole interest in advance? A. We prepaid the interest.

Senator Thompson.— You prepaid the whole interest? A. It is pretty hard, Senator, for you to change my habits.

Senator Thompson.— I know but we will try it. I think that some habits are going to change any you might just as well get educated as soon as possible and supposing you just get into the habit of answering his questions and then I am going to let you make all the explanation you want.

Q. When you sell a security for more than its par value, you get a premium on it, do you not? It is known to the financial world and accountancy world as a premium? A. Yes.

Q. Now, then when you sell for less than that face value you sell at a discount, do you not? A. You can call it that.

Senator Thompson.— Well, what do you call it?

Q. Well, let us see what authority calls it. I now read from the same authority at page 311, the definition and explanation of the word "Premium" as used in financial parlance. A. We are not in disagreement as to that.

Q. Well, we seem to be very much in disagreement when we get down to a concrete illustration. A. Not at all.

Q. "The percentage or price of a security in excess of its par or face value. Taking the face value of the security as one hundred dollars, a share of stock selling at one hundred and five would be selling at five per cent. or five dollars per share premium. The par value of various securities differ, however, therefore, it is not argued that if a share of stock is quoted at one hundred fifty it is selling at a premium for, if by chance, the face value of that share happens to be five hundred dollars it would really be selling not at a premium at all, but at a material discount."

Now in order that there may be no misunderstanding because in each of these definitions they have used the word "Securities" as applying also to a note such as was used here and not a bond, I will read from page 351 the definition of securities. "Securities: All forms of investments, stocks, bonds, mortgages, etc., of every kind. The written or printed papers that represent the ownership of corporations or the lenders' evidence of the borrower's

indebtedness, which includes a note of any character or any other order for the payment of money."

Mr. Yeomans.— It seems to me that is the difficulty. We have got a contract here which has a definition of debt, discount and expense. We also have a contract which has a definition of interest. Now, it doesn't make any difference what custom is or what text writers have written or what the Century Dictionary may say it means. We have a contract which says what it means and it has been interpreted by both parties that made it as meaning what we say it is. There is no objection.

I want to say to Mr. Abel, that as counsel of the company, I don't want him or think he ought to be compelled to draw any conclusions or give conclusions on the contract. As I see it, this investigation is for the purpose perhaps of basing a law suit.

Q. If as a matter of fact, this was an interpretation placed upon the contract by the parties themselves, why did you have any determination under the contract?

Mr. Yeomans.— Because the contract provides it.

Q. You know you couldn't have any allowance unless it was determined in accordance with the terms of that contract, could you?

A. No, sir.

Q. Then it don't matter how much, you can't get a dollar allowed that isn't allowed by the process of determination provided for in the contract?

Mr. Yeomans.— That is true.

Q. And it don't matter how much as parties you change the definitions or the terms of that contract, you can't get away with it under the legal view of it?

Mr. Yeomans.— That is the fact.

Q. They, why did you say that you are relying on invoking a rule of law that the parties may interpret their own contract? A. (Mr. Yeomans.) It wasn't even ambiguous. It was perfectly specific. The language was put in by both parties and they finally got together and he determined that it was right.

Q. I trust you will find an opportunity to discuss this thing in a court and settle it definitely.

Mr. Yeomans.— That is why I object to Mr. Abel being compelled to answer some of these questions.

Senator Thompson.— You have got a couple million dollars that you want to charge to construction and if there is anything in the way you have got to get over the obstacle and you go to the Public Service Commission and you take advantage of this poor, old man, that is the Chief Engineer, on a pension of twenty thousand dollars a year, and you get the corporation counsel aside by telling them it isn't discount, its interest, and now Webster's Dictionary gets in the way and the proposition is to get that out of the way, is that the theory?

Mr. Yeomans.— The proposition is this; we are not trying to get anything out of the way. The very reason that I am asking Mr. Abel and advising not to give conclusions is that I know this is an attempt to make a case or the basis on which to bring a law suit, and I don't think it is within the province of this Committee.

Senator Thompson.— You can't blame this Committee for wanting to make the corporation counsels' office of this city into something real and respectable, would you?

Mr. Yeomans.— No. I would like to help you.

Mr. Moss.— Could you imagine Harry B. Seaman, the former chief engineer, adopting any such attitude as the present chief engineer?

Senator Thompson.— I couldn't hardly, because he isn't the present chief engineer.

Let's find out what discount is.

Mr. Yeomans.— I am not objecting to that.

Mr. Abel.— I would like to know Mr. Shuster, what you would have charged that to.

Mr. Shuster.— I should have charged it to the New York Municipal Railway Corporation and paid for it out of surplus earnings.

A. (Mr. Abel.) But the New York Municipal Railway Corporation was a new creation and didn't have a dollar.

Q. Well, it was your own creation. A. At the instance of the city authorities.

Q. If, as a matter of fact, the Brooklyn Rapid Transit Company was not capable of making the contract that it spent months negotiating with the city on representation that they could do it, that is not the fault of the city nor should the city be penalized because it couldn't do it and has to resort to a paper corporation to do that thing. A. The city wanted a company that had no indebtedness. It wanted a company that was free from any bonded indebtedness and that is why the New York Municipal Railway Corporation was organized.

Q. But the predicament of one of the parties to the proposition that costs him more than it should is no reason why the other side should pay that cost. A. But it wasn't intended as a predicament. The railroad company knew what it had done and knew that when it got that contract it was covered.

Q. If the Brooklyn Rapid Transit had been a railroad operating company, did it claim here that it wanted more interest? A. The B. R. T. borrowed this money in October, 1912, and pledged ten millions of bonds for it.

Senator Thompson.—If you can't borrow money as cheap as the city can, what is your objection to the Municipality running the whole thing? A. They didn't have credit enough.

Mr. Yeomans.—That is just why they came to us. They couldn't get a bidder. They were running interest up to eight or ten million dollars.

Senator Thompson.—You turn them over to us and we will get the credit.

Mr. Shuster.—Mr. Yeomans, why should the city have to pay an excess cost for the Brooklyn Rapid Transit financing its end of its contract?

Mr. Yeomans.—Mr. Shuster, in the first conception of this matter the conference demanded that the Brooklyn Rapid Transit

Company should organize a new company to deal with them. They demanded it in their first reports. You find that it provides for that. This company did provide for it. The Brooklyn Rapid Transit Company having more credit than a company that was not organized went out and borrowed the money and the conferees know they were going to do it and it was provided.

Mr. Shuster.— And didn't the Brooklyn Rapid Transit borrow the money and all the money that was necessary and all the money the New York Municipal would need?

Mr. Yeomans.— They borrowed it because they were preparing for the contract.

Mr. Shuster.— If the Brooklyn Rapid Transit Company had been a chartered railroad corporation is there any question in your mind but what the company would have gone on and fulfilled its share of the contract?

Mr. Yeomans.— They didn't want it to.

Mr. Shuster.— Who?

Mr. Yeomans.—The city officials. We had plenty of companies that could have gone on and made this contract, the New York Consolidated for instance. You will find it in the first report of the McAneny Committee, that one of the provisions was that we should get up a new company. They wanted a new company organized with all the powers of a railroad law.

Mr. Shuster.— But did the city agree to pay for all this?

Mr. Yeomans.— Absolutely, before we got the money they agreed to pay for it, just as much as they did.

Mr. Shuster.— You didn't have the contract at that time.

Mr. Yeomans.— I know they didn't have the contract.

Mr. Shuster.— I see.

Mr. Yeomans.— I am talking about tentatively.

Mr. Shuster.— Do I understand that the contract doesn't contain all the agreements of the parties?



Mr. Yeomans.— It does, absolutely.

Mr. Shuster.— That controls and that is what I am trying to stick to.

Mr. Yeomans.— There are lots of things happened that didn't appear in the contract.

Mr. Shuster.— Yes, but all these have been merged and you know as a lawyer, no court is going to allow you to go behind it.

Mr. Chairman, I now read another very eminent authority, Sprague and Perrine, in their book entitled, "The Accountancy of Investment," and this approaches it from the angle of investment. Reading from page 76, section 99; "Bonds are seldom bought or sold at their exact par value and this fact has an effect on the rate of net income derived from the original investment. If the amount invested is greater than the par value, the difference is known as premium. This premium is not repaid at maturity as is the par value or principal of the bond and hence must be provided for out of the various interest payments. Thus, a bond purchased above par produces a lower rate of income than the rate of interest represented by the coupons. Conversely, if the purchase is below par the investor will at maturity receive not only the amount of his original investment but also the difference between this amount and the par value of the bonds. This difference, technically known as the discount, has the effect of making the rate of income higher than the rate of interest shown by the coupons." On page 34 of the same authority, section 33, in discussing and illustrating a manner of determining the discount in considering the present worth of one dollar for a single period it is evident that the original one dollar has been diminished by .029186 which is a little less than .03. In fact it is .03 divided by 1.03. This difference is called the discount in the present worth. For two per cent. the discount is 1 minus .942592 or .25704. This discount for two periods alike which is the discount for three or more periods are called compound discounts.

In the preface to a compilation of bond tables by the same authority we have this explanation, reading from page 1: "Bonds and other securities payable at a future date are frequently bought and sold above par at a premium or below par at a discount."

Senator Thompson.—Did you have to read up on all these authorities before you got to be Auditor of the Brooklyn Rapid Transit? A. (Mr. Abel) No, sir.

Q. (Mr. Shuster). Now, after hearing these authoritative expositions and definitions of the term discount, are you still prepared to say that this item was not a discount item within the meaning and understanding of the term by accountants and bankers and financiers? A. Well a banker might consider it discount but the borrower considers it prepaid interest. It depends which side of the fence you are on.

Senator Thompson.—When you get all through it is just the same as it was yesterday.

Mr. Moss.—The witness intimates that the borrower's standpoint might be different. Imagine a conversation between two business men. "I am going up to the bank to discount my note. Do you think they will discount it for me?" A. (Mr. Abel.) What has he paid?

Mr. Moss.—I know, but he calls it discount just the same as the banker.

Senator Thompson.—It all depends on the point of view. How is this? I saw a friend the other day and I asked him where he was going. He said he was going to the bank to negotiate his note. I said, "I'll endorse it for you." He replied, "I don't want it, I am getting into enough trouble getting it as it is." (Laughter.)

Mr. Shuster.—I don't find any such definition in the books. I looked for it with a great deal of care and I don't find any such definition, but both Mr. Turner and Dr. Webber used them synonymously. A. Prepaid interest and discount are used as synonymous terms?

Q. (By Mr. Shuster.) Yes, prepaid interest and discount are used as synonymous terms. A. They are prepaid interest charges.

Q. You are entitled to simple interest on your contract, are you not? A. Yes, sir, that is all we are getting.

Senator Thompson.— If that is a question of fact for the Jury, why, you will get beat, but if it is a question of fact for the Court I have no prophesy to make. A. I had always supposed that the contract was written simply to set forth the minds of parties to it. Now the minds of the parties in these negotiations were that the lessee should get six per cent. for its money, for every dollar that we borrowed. Now if you put this interpretation upon it the lessee wouldn't get six per cent. for its money. It will get five per cent. for its money for six years and then would get six per cent. thereafter. It was never contemplated in the negotiations and you would give the contract a meaning that was never intended.

Senator Thompson.— We don't know but we think the real lender, the one that really put up the money, we are not satisfied that he got the one million nine hundred thousand dollars.

Q. (Mr. Shuster.) Let me ask you this: Assume now that the engineer would not have allowed that item— A. We would have gone to arbitration.

Q. What difference would that have made on this proposition that you have just been stating? A. We would have gone to arbitration.

Q. Suppose you lost out. How would it affect it in any way? A. We would have got it on arbitration.

Q. Conceding that, it goes into your cost now and you get the benefit of that increased amount of interest. A. Well, if you want to call it "benefit," it is an actual outgoing and we are allowed interest on it and that is what the contract contemplated we should get.

Q. But it is the result of an obligation created for you prior to the making of the contract with the city and over which the city had no control. A. That is all lined up in the written contract. All these negotiations were understood. Now if that were denied, why, we would be warranted in denying the three hundred thirty thousand.

Mr. Yeomans.— Do you think the city would have dealt with us if all the conferees had not known that we had our banking arrangements made and could raise sixty million dollars?

Mr. Gaynor was going into the paper and saying we couldn't raise it either.

We went to raise this money. We sat down with the conferees and said this is the way that we can raise it and they said, that's what we want to do. Get it now and have it. And if we hadn't gotten it then we would probably never have gotten. These men looked upon it as a business proposition and said, "Go get it and when it comes to the contract we will fix it so you will get six per cent. during construction and six per cent. during operation.

Senator Thompson.— You say Mayor Gaynor suggested or required that you go and borrow this money in 1913?

Mr. Yeomans.— No, but I say he was stating in the newspapers about the Interborough Company saying, "These people can't get this money. There is no use dealing with the Brooklyn Rapid Transit," and he even went so far as to say that our equipment was ramshackle.

Senator Thompson.— He had already signed your contract?

Mr. Yeomans.— No, it was prior to that.

Senator Thompson.— As I understand, this was a question of money from October 1, 1912, to March 18, 1918, and this contract was signed by Mayor Gaynor in May, 1912.

Mr. Yeomans.— No, March, 1913. The date of the contract was March 19, 1913.

Senator Thompson.— I know that date, but it went through the Board of Estimate in 1912. Am I right about that?

Mr. Yeomans.— About that time. But what I want to say is this; we came into this field after a contract to operate the subway and it was during 1911, while this contest was going on whether the Interborough should have all or part of it, that Mayor Gaynor made these statements that we couldn't raise this money. It was in the papers at that time and we then went out and arranged for this money. We went to it.

Senator Thompson.— When did you say that was?

Mr. Yeomans.— That was during 1911.

Senator Thompson.— You mean now that you are going to charge us interest from 1911?

Mr. Yeomans.— Oh, no, the contract provides that we can't charge from October but we got into operation since and we never could have had any negotiations with the city if we hadn't that money.

Q. (Mr. Shuster.) But why should the city have to pay for that?

Mr. Yeomans.— Because the city was making money in doing it. If we had to wait until after October it would have cost a great deal more.

Q. But the city didn't agree to reimburse you.

Mr. Yeomans.— They agreed in the contract to take care of any money borrowed on our behalf.

Q. Wasn't it the price you had to pay?

Mr. Yeomans.— No, the city doesn't pay a dollar. If you have my note and I make a contract with you and outside of that a contract that that note should be cancelled. There is only one note. Is there any doubt what you mean about it? This contract had been made and the parties knew what was outstanding and they made a contract to cover. Why, there is no doubt about it.

Senator Thompson.— That is an interesting proposition to me, that you went on and incurred this expense.

Mr. Yeomans.— We didn't incur any expense for the reason that we got this on an option, this money which expired in 1912.

Senator Thompson.— But here is your Auditor swearing that at the time your money was gotten you paid the interest in advance.

Mr. Yeomans.— No.

Mr. Abel.— Yes we did. We paid this interest on the Brooklyn Rapid Transit five per cent. notes.

Senator Thompson.— When did you pay that on October 1, 1912? Why did you go and spend pretty nearly two million dollars before this contract was executed? How did you know so well that that contract was going through? That is what I want to know.

Mr. Yeomans.— What is that?

Senator Thompson.— How did you know so well that you should bet two million dollars?

Mr. Yeomans.— We took the risk.

Senator Thompson.— Yes, you took the risk on the election of a governor and on the appointment of a Public Service Commissioner and others and how could you bet so good as that?

Mr. Yeomans.— We didn't control the election of the governor.

Senator Thompson.— I don't blame you for denying it now if you did at that time.

Mr. Abel.— We were turning over to the city fifty per cent.

Senator Thompson.— That is the important thing here. You went and paid out practically two million dollars October 1, 1912.

Mr. Yeomans.— We paid it to the New York Municipal.

Mr. Abel.— I mean that the Brooklyn Rapid Transit borrowed forty million dollars on the six per cent. basis on October 1, 1912, in order to carry out this subway contract. Now the city of New York was interested in this contract and was more interested in it really than we were, notwithstanding the popular notice that the city of New York did not, the city of New York got a good bargain. We gave them a part consideration in all the future development of our lines and they were anxious to have it.

Mr. Moss.— Now wait a minute. That is two million dollars and Mr. Yeomans said, "We took our chance," and this gentleman, I heard him say it too. Colonel Williams also remarked, "We took our chance." Now that is a pretty big chance.

Mr. Yeomans.— It wasn't anything like what the Interborough took. They had to pay for it from the beginning.

Senator Thompson.— No, Mr. Morgan wrote them a letter just before and released it.

Mr. Moss.— I tell you Mr. Morgan wrote them a letter that was thrown at the Mayor, that if it was thrown up he wouldn't hold the money.

Now, Mr. Abel, do you remember the letter that Mayor Gaynor wrote about "Damnab!e rascality?" A. Why, I remember some campaign speech that he made.

Mr. Moss.— No, but a letter which he wrote, not a campaign speech, I am speaking about a letter addressed to the public. A. Well, he used to write to his friends periodically.

Mr. Moss.— No, but there is one letter that that was in June, 1911. He said, "This was damnable rascality and he would never stain his administration with it." A. That is a personal letter or article, Mr. Moss.

Mr. Moss.— No, it is no personal letter. Why, Mr. Quackenbush turned to me when I read that letter and said he beat the controller to it. He got there first.

Mr. Bullock.— He got that out just a few hours before the controller's letter appeared in the campaign.

Mr. Moss.— That letter is on file in the mayor's office. You had then positive knowledge that the mayor had called this whole business "Damnab!e rascality."

Mr. Yeomans.— No, he was talking about the Interborough. he didn't mean us. You can't show a letter that he ever wrote during his life that he meant us.

I beg your pardon. He has called my attention to it.

Q. (Mr. Moss.) He condemned you as an old ramshackle road, worse than the Interborough.

Now I get back to it. You people had notice that the Mayor and the Controller had raced to the post, as it were, the Mayor getting in a few hours ahead of the Comptroller, calling this whole business "Damnab!e rascality," and promising the people of New York to do nothing at all with it. I would like to know how it

was that you gentlemen dared take the risk, as your counsel has put it, of paying two million dollars as interest in 1912, October, long before any contract was executed. A. (Mr. Abel.) Well, my own version of that would be that the city thought they were getting such a good bargain in their trade with the Brooklyn Rapid Transit that there wasn't much chances but that they would ultimately enter into the contract which had been tentatively discussed before.

Q. What inside information had you that, notwithstanding the public declarations of these important officials, you knew it was going through? A. We didn't know it was going through. We didn't know it was going through until it did. We had to choose between raising forty million right in the face of a presidential election or take a chance of not being able to get it at any price thereafter.

Senator Thompson.—What did you want to borrow it in the face of a presidential election for? A. We didn't want to but these contracts were in process of negotiation and we almost had to do it.

Mr. Yeomans.—The Board of Estimate and Apportionment and Mayor Gaynor and everybody had tentatively approved this arrangement.

Mr. Moss.—Tentatively, why, do you know as late as February and March, 1913, the mayor was holding hearings to allow it?

Mr. Bullock.—That is Mayor Mitchel.

Mr. Moss.—No, sir, don't think you can teach me this thing.

Do you know as late as February and March, just before that contract was signed the mayor was holding public hearings in the City Hall to allow citizens to come there and protest against these contracts?

Mr. Bullock.—How many?

Mr. Moss.—A lot of them and I have got the record of the speeches that were made in my office. I have got the record of those speeches and that record shows how the mayor put the sleepers to sleep.



Senator Thompson.—There is no question on earth but that the Public Service Commission stood two and two on it on the second day of February, 1913, the day that Mr. Wilcox's term expired. There is no question at all and it depended on the state of mind of the appointee of the governor as to whether the contract would be signed or not.

Mr. Yeomans.—You asked what we borrowed this money on.

Mr. Moss.—You borrowed it on a sure thing.

Senator Thompson.—Didn't you have to have the Public Service Commission approve?

Mr. Woody.—Wait a minute. There were the conferees of the Board of Estimate and Apportionment and the Public Service Commission which agreed upon the contracts, all the details of them, but the principle of the contract and that was approved by the city officials, Mayor Gaynor himself voted for that; and we had the word of the Board of Estimate and Apportionment and the Public Service Commission that this contract was going through.

Senator Thompson.—Whose word did you take on this?

Mr. Woody.—All of them.

Senator Thompson.—Did you have Maltbie?

Mr. Moss.—They voted against the contract and wrote memoranda which are among the finest articles that have been written on this subject.

Senator Thompson.—I am interested to know if you had the word of Mr. Wilcox or Mr. Maltbie or either one of them.

Mr. Woody.—The conferees' report is in writing. And the counsel were told to prepare a contract on those principles.

Senator Thompson.—Now let me tell you something, I may not get this right, but we have had some experience. We had a convention one time to name a senator and there were five delegates on one side and five delegates on the other. They balloted day after day and day after day, but one day one of the delegates

on one side told the candidate for senator on the other that he was going to vote until four o'clock the next afternoon and then he was going over there. But to the minds of the other delegates the senator showed them that if he could hold out till four o'clock the next afternoon he could win, and it did go over that way. And if Mr. Wilcox told you in October, 1912, that he was going to sign these contracts then you had something pretty good to stick to and get what you wanted and that is important for us to know.

Mr. Yeomans.— In May, 1912, there was a concurrent action embodied in a report which embodied all the principles of these contracts and the lines that the two companies were to have. Different lines were to subscribe their interests. That was passed and approved and counsel was told to get up a contract with those principles embodied in it. Now that is the whole situation and we went at it to do that.

Senator Thompson.— We will assume then that you people had the word of Mr. Wilcox.

Mr. Woody.— The Board of Estimate took it up.

Senator Thompson.— That was in May, 1913. Our record shows that you had the Board of Estimate's votes in May, 1912.

Mr. Yeomans.— And the Public Service Commission's at the same time in adopting McAneny's report.

Senator Thompson.— But you got the Board of Estimate on the contract, didn't you?

Mr. Yeomans.— All the principles of this contract were embodied in the May, 1912, report.

Mr. Woody.— Absolutely.

Mr. Moss.— When was it that the money was arranged for? Was that in May, 1912, or 1911?

Mr. Bullock.— October, 1912.

Mr. Moss.— When was it arranged for?

Mr. Bullock.— No, June, 1912, after the Board of Estimate and the Public Service Commission had acted.

Senator Thompson.— After that time these artistic things like a prior determination were stuck in, weren't they?

Mr. Yeomans.— Yes.

Senator Thompson.— Whoever invented the prior determination invented it in May, 1912.

Mr. Yeomans.— I don't know who invented it.

Senator Thompson.— Whoever he was he ought to have gotten a bonus.

Mr. Yeomans.— Can Mr. Bullock speak?

Senator Thompson.— I am going to hear Mr. Bullock, Mr. Shuster, you and Mr. Moss in the order named.

Mr. Bullock.— The letter of Mayor Gaynor to which Mr. Moss has referred, this newspaper statement of Mayor Gaynor's was issued on the night before the Board of Estimate took action, in July, 1911, and the circumstances under which it was issued are as follows: (I was covering the subject with a story for the New York Times and I am talking now from first hand knowledge.) Controller Prendergast up to six o'clock that afternoon was prepared to vote for the plan which Mr. McAneny and the then majority in the Board of Estimate appeared to be in favor of, which was the division of the new lines in accordance with the first McAneny report of May, 1911. Objection had been made to the basis of the Interborough preferential particularly in that report, on the percentage of return which the Interborough should have on its entire investment old or new as it gave the Interborough too large a rate on its old investment and that the city should not. That was the crux of the entire controversy during June and July of 1911.

The Board of Estimate held an informal meeting or a conference on the afternoon of July 19 or 20 — which date it is I wouldn't undertake to say without referring to the records — it was agreed that they should next day meet and ratify this joint arrangement. Up to six o'clock that night Mr. Prendergast in conversation with me, was prepared to act with the Board.

Mr. Yeomans.— You were then with the Times?

Mr. Bullock.— I was on the Times and I talked with him at his office and we also were out on the corner of the street here at the City Hall Park.

Between six o'clock that night and nine o'clock that night Mr. Prendergast changed his mind. The New York American printed various stories, facsimile letters and other details on why Mr. Prendergast changed his mind. The news was in the newspaper offices before ten o'clock that night.

Senator Thompson.— What did you think about it?

Mr. Bullock.— I don't care to state other than it is an honest change of mind.

Senator Thompson.— If it is we would like to hear it.

Mr. Bullock.— Mr. Prendergast was interviewed by a gentleman representing the New York American and as the result — but following in point of time — representations by them made as to the attitude of that paper if he stuck to his previous attitude caused him to change. He changed his mind and announced that he would vote against the Interborough contract the following day.

Now this news that Mr. Prendergast had changed his mind reached the newspaper office about nine o'clock that night. There were various pipe lines working and I have no doubt that it reached Mayor Gaynor not much later than it reached the newspaper offices. The vote of Mr. Prendergast against the Interborough contract made it impossible for them to get a majority in favor of the Interborough contract even if the Mayor voted for it and Mayor Gaynor thereupon issued his statement which reached the offices about midnight that night saying that the city had been over-reached by powerful financiers and got on the other side and voted against the Interborough contract the next day.

Senator Thompson.— Why did he do that?

Mr. Bullock.— Because it wouldn't have done him any good to vote for it.

Mr. Moss.— Why did he say "Damnable rascality?"

Mr. Bullock.— He said that in the Pearson article, Mr. Moss. It is too deep for me to father the mayor. I tried for several

years in the newspaper business and I think every other newspaper man has tried and we all wound up exactly where this Committee has wound up, without anything but our own ideas on what the real circumstances were. And the failure of this Committee and subsequent investigations has led me to modify my ideas, the ideas I once entertained on that subject.

Mr. Moss.— You say, “ The failure of this Committee.”

Mr. Bullock.— Yes, the failure of this Committee to get anything specific.

Senator Thompson. — In what manner?

Mr. Bullock.— As to the Mayor’s attitude.

Senator Thompson.— We have got pretty specific testimony.

Mr. Bullock.— What did you mean? You have been implying all through that the mayor was influenced by ulterior motives or considerations.

Senator Thompson.— What do you mean?

Mr. Bullock.— I mean just what you mean when you asked Mr. Williams.

Mr. Moss.— You mean to say that you had that opinion at some time?

Mr. Bullock.— I did.

Mr. Moss.— And you think because —

Mr. Bullock.— I think because so many people investigated that theory, including myself, and all the other newspaper men that were working on a similar story, that there is considerable speculation as to what is true.

Senator Thompson.— If he wasn’t influenced by what you term “ Ulterior motives ” why shouldn’t he have voted for them if they didn’t think they ought to be made whether Prendergast did or not. Why did Prendergast help him to make up his mind in the exercise of good judgment? That is what I want to know.

Mr. Bullock.— It is too deep a problem for me to fathom, the

fact of what was in Mayor Gaynor's mind. And anybody that came in contact with him have given up long ago.

Mr. Moss.— As a newspaper man of experience you had certain ideas which you have expressed?

Mr. Bullock.— I did.

Mr. Moss.— And the only reason that you have changed those ideas or modified them was that this Committee has not found out?

Mr. Bullock.— No, everybody that has investigated it.

Q. (Mr. Moss.) Don't you know that the failure of your road to answer a simple question has tended to keep that thing in the air and in our mind? A. (Mr. Bullock.) No, sir, I do not realize anything of the kind.

Q. Have you concurred in the advice that Mr. Williams said he received from counsel of the road to refuse to answer those questions? A. No, sir, I got up here on the spur of the moment. Let me say, because your dates are so mixed up, you are getting your dates so mixed up.

Q. My dates are all right. It isn't the dates that bother me, it is the fixing of the dates that bothers me.

Wait an instant. Did you ever hear about the man who called upon Colonel Williams and said that perhaps or suggested in some way that for five hundred thousand dollars the objections made could be overcome?

Mr. Bullock.— I am instructed by counsel to refuse to answer.

Now to go back to these dates on that meeting of July, 1912, or July, 1911, the Board as the result of the overturn which I have described turned down the basis which the McAneny Committee and the Public Service Commission had been prepared to proceed with, so far as the Interborough was concerned. The original report of May, 1911, provided that if either company rejected its part of the lines the entire system, less certain odds and ends which couldn't be operated, if we had it all or the Interborough had it all, should go to the other company, and therefore, as a consequence for the failure of the Interborough to be

passed in that meeting the next arrangement was passed allotting the entire system to the Brooklyn Rapid Transit. That was July 22, 1911. Evidence which has already been received here from Colonel Williams referred to it. In the letter of Mr. Clark which was read yesterday, it was referred to and also the Morrison letter spoke of it. That is, for the Brooklyn Rapid Transit to conclude an arrangement with the city based on the exclusive operation of the whole system.

In June, 1912, the second McAneny report came out which to the city presented the substance and essence of this present rule arrangement and the statement that both companies were prepared to go into it and the Board of Estimate and the Public Service Commission formally ratified that report and the companies had then the moral obligation as specified by that concurrent action of the Board of Estimate and the Public Service Commission. It was on that basis that the Brooklyn Rapid Transit started the negotiations, undertook and raised its finances and the differences of opinions to which you refer occurred in the following winter and which led Mr. Maltbie to dissent from the contract, but related to detail which in their opinion was important enough to lead them to vote against the contract in the final negotiations. We had the pledge of the city during all that time as expressed June, 1912, and it was on that pledge the financing was conducted.

Senator Thompson.— You financed on that pledge after you had the pledge of Mr. Prendergast and Mr. Gaynor, made in the campaign, that they wouldn't sign anything? You had the article in Pearson's written by Gaynor in December following, that he didn't believe in any such thing.

Mr. Bullock.— This article was in June before the mayoralty campaign.

Senator Thompson.— You had the vote in 1911.

Mr. Bullock.— Prendergast voted in favor of it.

Senator Thompson.— You also had Gaynor's pledge by that time by this letter Mr. Moss speaks of, the "Damnably rascality" letter. Didn't those mean anything?

Mr. Bullock.— Why Senator Thompson at the time when Gaynor wrote his first subway article and ran for election on a certain program, at the time the Interborough conducted its negotiations with Mr. Willcox, which you have testified to, in 1910 between the Interborough and the Public Service Commission; according to the stories of these gentlemen and the following January, 1911, when Mr. Mitchel and Mr. Prendergast put together their original majority report of the transit committee and the following spring when the first McAneny report was adopted and the next spring when the instrument was signed, is a kaleidoscopic change of conditions. The whole administration of the city changed within that period of two years.

Senator Thompson.— But the change was distinctly disadvantageous to the city and by that same extent advantageous to the railroad.

Mr. Bullock.— It was not disadvantageous to the city up to the time Mr. McAneny took up the negotiations and Mr. Prendergast and Mr. Mitchel in that report. And in that report I was an enthusiastic supporter at the time.

Senator Thompson.— You weren't working for the Brooklyn Rapid Transit then?

Mr. Bullock.— No, sir, but I haven't changed any of my considerations because I am working for the Brooklyn Rapid Transit.

This contemplated a subway which would give you one line up to the Bronx, one line to Coney Island, all subway, which wouldn't give any interest on the cost of construction for an indefinite time and was doing this as the attempt showed as a club to force the Interborough Company to do the logical thing and extend its lines and the Interborough wouldn't do it. Now ultimately, and Mr. Mitchel and Mr. Prendergast, when they made that report with no other company in sight figured that it was better rather than to give the Interborough its own terms, which it asked at that time — that it was better for the city to build this line even though it took every cent of the city's. The financing and traffic operation of that were so serious that when they put it up for bids they didn't get a single bidder of anybody to operate it. There were bids to



construct, the Sprague bid and other bids, but the Tri-borough subway is put up for bids and there wasn't a single financial interest or any other interest that could operate it. After that the Brooklyn Rapid Transit came in and Mr. McAneny conceived the idea of extending the five cent fare to every part of the greater city and providing an amount of transportation that no one of the similar subway plans of this town ever had dreamed of and when the city woke up and realized what that meant, providing three and four times the amount of transportation at a five cent fare than any other plan had ever contemplated, then the city turned and supported that plan and is supporting it today notwithstanding what appears from the talk that we hear occasionally around this investigation.

Now that was constructing a huge amount of profitable mileage. I should say, unprofitable mileage.

Senator Thompson.— I would like to submit it to a vote of the people of the city.

Mr. Bullock.— That is constructing a huge amount of unprofitable mileage in the Bronx, Brooklyn and Queens, building lines that wouldn't pay interest if they paid expenses in a number of years and it involved the city and two companies to the combined ability of all three parties in those contracts and the reward which the city got was the extension of five cent fare and the providing of rapid transit that nobody had ever dreamed of in New York before, and you can't compare it with anything that existed when the contracts were signed and the situation that existed in the different periods before, any more than you can compare the state of public mind towards business today with what it was back in 1913 and 1905.

Senator Thompson.— The Interborough had offers before these people all these times?

Mr. Bullock.— That is the truth and I won't hear any argument about it.

Mr. Moss.— Where is the extension of the five cent fare?

Mr. Bullock.— Five cent fare before this system was put into operation extended from the Battery to the limits of the Inter-

borough line in the Bronx and from Brooklyn Bridge and Williamsburg Bridge to the limits of the Brooklyn Rapid Transit line in Brooklyn. It now is extended, so far as the Interborough system is concerned, to the outmost limits of Queens to the end of Nostrand Avenue and Harmonia Avenue down near Sheepshead Bay and still farther into the Bronx, up Jerome Avenue on one side and through Bronx Park on the other. So far as our system is concerned it is extended up Fifty-ninth street in Manhattan from all over Brooklyn throughout lower Manhattan, to which Brooklyn had no access before. It is extended out into Southern Queens with the Liberty Avenue and Jamacia Lines and it is extended into Northern Queens.

Mr. Moss.—Isn't the average length about the same?

Mr. Bullock.—The average length of what?

Mr. Moss.—What is the average five cent fare?

Mr. Bullock.—You mean the average ride that a person makes for five cents? That has nothing to do with it.

Mr. Moss.—Lots of people coming over from Brooklyn have got to pay two fares.

Mr. Bullock.—That is true, but it don't compare with the number that used to have to before.

Mr. Moss.—Don't you remember that as an excuse for giving in to this arrangement that it would make a universal five cent fare?

Mr. Bullock.—I recall that substantially a five cent fare was what the mayor said.

Senator Thompson.—He didn't use the word "Substantial."

Mr. Bullock.—Unless you have a subway line on every block you can't have a universal five cent fare. But in the great majority you have got it.

Mr. Moss.—You could by transfers.

Mr. Bullock.—If they had ever insisted upon transfers they wouldn't have gotten it from either company.

Mr. Moss.—But you realize that this contract running for forty-nine years fastens a five cent fare upon the people for forty-nine years.

Mr. Bullock.—For heaven's sake, isn't that cheap enough?

Mr. Moss.—Are you familiar with the reports made by the railroads to the Public Service Commission as to what it costs them to carry a passenger?

Mr. Bullock.—I have some familiarity with them.

Mr. Moss.—I happened to look at the report for 1913, published in the printed report for the Public Service Commission which stated for the year 1913, that in the subway average cost per passenger was two and three tenths cents.

Mr. Bullock.—That may be. The present subway is a very profitable proposition.

Mr. Moss.—And for the Manhattan Elevated Railroad two and four-tenths cents.

Mr. Bullock.—You will have to show me the elements.

Mr. Moss.—Please go along as far as you can with me.

Are you aware that there are a great many people and some people of ability that have figured out that there is a very heavy percentage of profit to the railroads in the present five cent rate?

Mr. Bullock.—What five cent rate? Surface lines, rapid transit lines, or what?

Mr. Moss.—Take the rapid transit lines.

Mr. Bullock.—I should have to see such a report to see what it showed to express an opinion on it.

Mr. Moss.—You are not familiar with it?

Mr. Bullock.—Not until you identify the report.

Mr. Moss.—Do you know that before these contracts were signed there were men of scientific attainment and of national reputation who were urging that the five cent fare in New York

City in the rapid transit lines was excessive and that there would be a profit to the companies at three cents?

Mr. Bullock.— I was never acquainted with a man of scientific attainment and national reputation, who made such a statement with authority.

Mr. Moss.— Did you know that Mayor Gaynor himself —

Interrupted by Mr. Yeomans.

Mr. Moss.— Can you allow a question to be asked Mr. Yeomans?

Mr. Yeomans.— Oh, yes, I will.

Senator Thompson.—(Rapping for order.) Mr. Moss will ask a question and if Mr. Bullock wants to answer it is all right.

Mr. Moss.— Did you know that on various occasions before Mr. Gaynor, the mayor, had committed himself to these contracts he publicly announced that a five cent fare was too much for the city of New York and extortionate?

Mr. Bullock.— I remember that Mayor Gaynor in the heat of that controversy made a great many statements, and as I remembered it and others who had greater familiarity than I with these matters, knew were not founded on fact or were proper statements to be made.

Mr. Moss.— I know, but I am simply asking you if you know that various persons, and I mentioned Mr. Gaynor to you by name, who declared after making a great study of this matter, that five cents was an extortionate fare for the city of New York.

Mr. Bullock.— I remember that Mayor Gaynor made a great many representations and misrepresentation during the subway campaign.

Mr. Moss.— Do you know that in decisions relating to the Brooklyn Rapid Transit, he declared that the five cent rate was too high?

Mr. Bullock.— I am familiar with the difficulty that they got into over in Coney Island.

Mr. Moss.— Do you realize that not only does this contract fail to give universal five cent fare but that it fastens a five cent fare on the people of New York for forty-nine years to come and that they cannot by any way lessen the rate of fare for forty-nine years to come?

Mr. Bullock.— I do and I realize that a substantial part of that forty-nine years will have elapsed before the unprofitable new mileage which is being built under this contract to build up the outlying sections of this town, will be earning enough money to pay interest and sinking fund and go on operating.

Senator Thompson.— Why at the present rate of progress you will have everything built on Long Island very soon and your term doesn't begin to run until about that time.

Mr. Moss.— Only a few years.

Mr. Bullock.— I am talking about a few years. That is a few years and forty-nine.

Mr. Moss.— In forty-nine years most of us will be dead. I hope to be alive. And perhaps our children will be dead in forty-nine years and before that forty-nine years comes around on the glowing promises made for the Brooklyn Rapid Transit by your people here, there will be another situation and that that a three cent fare will be given ample profit to the B. R. T. system, but the people can't have it because they are bound by a forty-nine year contract.

Mr. Bullock.— That is your prediction, Mr. Moss.

Mr. Moss.— It is no prediction. I am putting it under the facts.

The Interborough, Mr. Bullock, reports showed that they are paying nine per cent. now upon their present road, which seems to be necessary to carry the burdens of some other companies and they are salting as much more which they don't pay out as dividends.

Mr. Bullock.— Certainly they have got a system with a large percentage of their mileage in the most congested part of the United States.

Mr. Moss.— Yes, they have got a nice system and five cents per passenger is more than it is worth, and according to Mr. Gaynor's statements your Brooklyn Rapid Transit is going to beat that, but you have bound us hand and foot by a forty-nine year contract and are not giving a universal five cent fare at that.

Mr. Bullock.— You overlooked the thing that one hundred million dollars of city credit that is now going into the Brooklyn Rapid Transit system and has gone into it; that is, the lines operated by us became released from the debt limit and new subways can be built everywhere to the extent of one hundred million dollars.

Mr. Moss.— Did you think we need any more?

Mr. Bullock.— You go over and ask that in Brooklyn and see.

Senator Thompson.— After we get all through we find that in October, 1912, pretty nearly six months before the contracts were executed, the railroad paid out a million nine hundred thousand dollars. A. (Mr. Abel.) Yes, sir.

Q. (Mr. Shuster.) Did you actually pay it to the bankers?  
A. The bankers took it.

Q. What did you do with the forty million? A. Left it on deposit.

Q. For how much? A. Three per cent.

Q. Paid them six and got three during this time? A. That is the contract.

Q. If the contracts didn't happen to be signed you stood to lose a million nine hundred ninety thousand dollars, is that correct?  
A. Yes, sir.

Q. Mr. Abel, in order to get something exact on our record in regard to this transaction, did the bankers furnish you with a memorandum of the money transaction on October 1, showing your net avails? A. The bankers gave us their checks for the proceeds.

Q. Could you furnish us either from your bankers or from your own records, the statement showing just how much the cash avails of the sale of the forty millions of notes was at that date  
A. Yes, sir.

Q. If you will just send that to us tomorrow. This million nine hundred thousand was paid October 1, to these bankers, how much did Kuhn-Loeb & Company get? A. I don't know what their participation was.

Senator Thompson.— Could you tell Mr. Yeomans?

Mr. Yeomans.— I can't tell you. There was Kuhn-Loeb & Company, The Central Trust Company and Kidder-Peabody & Company, but I can't tell you what the participation was, senator.

Senator Thompson.— Did they participate to the extent of a third?

Mr. Yeomans.— I think they did.

Senator Thompson.— Then Kuhn-Leob got at least six hundred thousand dollars.

Mr. Yeomans.— I can't tell you. I don't know.

Senator Thompson.— Is that the thing of which Jacob Schiff is connected with? Do you suppose he made that contribution to Sulzer's campaign out of that six hundred thousand he got out of that? It was made there for October I think.

Mr. Yeomans.— I think it was a very charitable way to use this money if he did.

Mr. Shuster.— Just going across to your counsel here because I think he may be more familiar with it, as I understand, the object of organization of the New York Municipal, was in order to have a corporation whose credit would be more sufficient than that of the Brooklyn Rapid Transit.

Mr. Yeomans.— I don't think so. No, the purpose of organizing was to have a new company, to have a new company organized under the railroad law and both acts, as Mr. McAneny stated in his report, a company that would represent all the boroughs practically.

Q. (Mr. Shuster.) Well the organization of the New York Municipal was an additional credit to be added to the aggregate of companies known as the Brooklyn Rapid Transit System by

that organization? A. (Mr. Yeomans.) Why, I don't know what you mean.

Q. Did you have any more property by doing that aside from the charter from the state? A. Well, we organized it for two millions of capital and issued two hundred thousand dollars in stock. This money went out and purchased a lot of property.

Q. Yes, but it was purchased with the money that was borrowed for it. Is there any essential difference in this transaction than it would have been if the Brooklyn Rapid Transit had simply been the endorser of the obligations, instead of a direct borrowing on their own notes and then relending that money on the bonds of the New York Municipal? Isn't that about what it is in essence? A. No, I don't think so.

Q. They had to guarantee these bonds. A. They didn't assume to agree to pay them while the New York Consolidated Company owned all the elevated lines in Brooklyn and all the elevated equipment with a very large investment and also gave its mortgage guaranteeing to pay that.

Q. Was that an additional endorsement? A. Additional to the Brooklyn Rapid Transit.

Q. Exactly. The New York Consolidated, so far as operating the railroad and carrying out the contract, it could have done that just as well as this new corporation, could it not? A. Well, yes.

Q. What your bankers required then was a first lien on something? A. Yes.

Senator Thompson.—In that case they got a first lien on nothing.

Mr. Yeomans.—What do you mean?

Senator Thompson.—Why the New York Municipal Railway Corporation didn't have anything on October 1, 1912.

Mr. Yeomans.—This is the proceeds of the notes.

Mr. Shuster.—That it borrowed.

Mr. Yeomans.—I don't care. It had it.

Mr. Shuster.—But you were under obligation to pay it back.



Mr. Yeomans.— Yes. The money was on deposit. It was our money. If it had to be paid back the next day we could have paid it back.

Mr. Shuster.— Now then on the first day of October, 1913, when the money was transferred to the New York Municipal Railway Corporation —

Mr. Yeomans.— It wasn't transferred then.

Mr. Shuster.— When was it transferred then?

Mr. Yeomans.— Mr. Abel can tell you.

Mr. Abel.— To whom, Mr. Shuster?

Mr. Shuster.— The New York Municipal. A. No, the money was transferred to the New York Municipal about March 19, it might have been the 20th, after the contract was entered into.

Q. So there was no time during the period October, 1912, until the time March, 1913, did this company have that money?

Mr. Yeomans.— Subject to draft. A. The money was kept for security for notes for the purpose of securing the bonds and in addition to the proceeds of the notes the Rapid Transit Company took ten million dollars of its own bonds and hypothecated those.

Q. The bankers insisted on that. They had to have something for their money.

Senator Thompson.— Did you get the use of the money? Couldn't you draw a check on that money? A. No, sir. That money was a trust fund. It was for the purpose of the contract, the subway contract, that money was held in trust until March 19, 1913.

Senator Thompson.— Then in that case they lend it to you and then don't give it to you.

Q. It was a bookkeeping transaction? A. It wasn't a bookkeeping transaction at all.

Senator Thompson.— We had a lot of sympathy the other day for these bankers. They had the money on hand and it had to be

loaned and by this transaction they still hadn't loaned it. Oughtn't we be more sorry for them? They couldn't lend that.

Q. Their arrangement was the same? A. Why they take the bonds upon the understanding that the money shall lodge with the depository.

Q. Subject to draft in accordance with the terms? A. The terms of the arrangement.

Q. You had arranged for this financial transaction with the bankers as early as the first of July, 1912? A. Sometime early in the year, yes, sir, but the actual transaction was October, 1912.

Q. At the time you made your arrangement with the bankers was there any time limit fixed in which you must avail yourself of the money? A. Yes, sir, October 1, 1912.

Q. That was a specific understanding? A. Yes, sir.

Q. So that you were obligated by the banker and had to take the money at that date? A. Yes, sir.

Q. Did the bankers insist on holding you to this strict letter of the proposition? A. Well, they did hold us.

Q. Now, going back to the situation as to the collateral, behind all this financing was there any value in the property mortgaged under the trust agreement with the Central Trust Company and the Brooklyn Rapid Transit Company beyond the ten millions of bonds? A. There was the undertaking of the New York Consolidated together with these undertakings of the Brooklyn Rapid Transit.

Q. At that time? A. They were all taken at that time.

Q. Ten millions of the face amount of the first refunding mortgage gold bonds of the Brooklyn Rapid Transit Company, that is the trust agreement, and then the agreement to assign and transfer the bonds of the New York Municipal whenever they were issued? A. Yes, and I think the trust agreement securing the bonds provides for the guarantee.

Q. Now then, when you come to the properties described as underlying and securing the New York Municipal Railway Corporation's bonds there is largely the operating contract with the Consolidated Company which was a privilege and a right rather than physical property. A. It was a lease of the New York Municipal by the New York Consolidated.

Q. You had a lease? A. A lease of the New York Consolidated and the New York Municipal and then we had the city contract as before.

Q. Then you had the city contracts which are franchises and two relatively small parcels of real estate.

Mr. Yeomans.— And had the proceeds of the notes on deposit also.

Q. But those were yours to spend when you issued the bonds. A. No, the bonds were to take the place of that money, then it became available for us.

Q. I know, but the security behind your bonds were those contracts and certificates of the city of New York. A. All the operating contracts were the operating companies'. All the property both present and acquired is of the New York Consolidated.

Q. But that wasn't the property of the New York Municipal? A. No, but it was back of this whole proposition.

Q. But that gets right back that the financing was through largely the New York Consolidated. A. The Brooklyn Rapid Transit too.

Q. The Brooklyn Rapid Transit had only given ten million of its bonds. A. Oh, it had given forty million notes.

Q. Yes, but you got the bonds which you could immediately convert and take up your notes couldn't you? A. And liability follows the bond.

Q. True, but that isn't the Brooklyn Rapid Transit bond. A. You must understand that the Brooklyn Rapid Transit had a large surplus besides this ten millions of bonds.

Q. It didn't pledge the surplus. A. It pledged its whole credit.

Senator Thompson.— Now, that you can settle by the instruments themselves. Let's see.

Mr. Shuster.— You may do that. I haven't had time to wade through all these. A. The New York Consolidated gave its mortgage guaranteeing that mortgage.

Q. Yes, the New York Consolidated guarantees the performance by the New York Municipal.

Mr. Yeomans.— If you read the bond, Mr. Shuster, every one

has on the guarantee of the New York Consolidated, agreeing to pay it.

Mr. Shuster.—It resolves itself to this: That so far as the credit situation of the Brooklyn Rapid Transit System was concerned you were abundantly strong enough to borrow the forty millions and the additional twenty millions without the assistance of the New York Municipal Railway Corporation, were you not. A. (Mr. Abel.) Yes, that is so, but the city wanted the New York Municipal as the agency to take the title to them.

Mr. Yeomans.—That could give a first lien.

Q. And you were willing that they should have that?

Mr. Yeomans.—Yes, we agreed to it. A. (Mr. Abel.) In the event the city captured these lines there would be mortgages to be taken care of and they want the New York Municipal to be free from any encumbrance.

Q. Now, Mr. Abel, what is the Transit Development Company? What is its relation to the Brooklyn Rapid Transit if any? A. The Transit Development Company has the principal power houses and maintains the equipment and construction on account of all these companies on the basis of cost plus five per cent. As to the maintenances work the Transit Development Company gets cost plus five per cent. and as to construction work it gets actual cost.

Q. Does that apply to subway? A. It doesn't to the subway work. It was organized about 1902, and a little before or about the time of the creation of the Brooklyn Rapid Transit company's refunding four per cent. mortgage and that for the purpose of having a company that was free from debt, so that the expensive developments that would have to be made, it would be able to give a first lien security to the Brooklyn Rapid Transit.

Q. Whenever you get in debt you organize a new company, is that the process? A. No, we organized this company in order that we could improve the credit and borrowing capacity —

Q. Of the Brooklyn Rapid Transit? A. Not of the Brooklyn Rapid Transit, no.

Senator Thompson.— Credit is a matter of form rather than a matter of substance.

Mr. Yeomans.— That was organized for economical purposes.

Q. (Mr. Shuster.) It is under contract to do all of your maintenance work at cost plus five per cent.? A. (Mr. Abel.) Yes, sir.

Q. Now that cost includes what besides material and labor?

A. All the elements.

Q. Your overheads, salaries, interest on moneys and discounts?

A. No, no interest.

Q. Do you know what would be a fair approximate unit of overhead charge as made in those contracts? Is it anything like one hundred per cent. on labor cost? A. Made by whom?

Q. On the Transit Development Company. A. I have testified to that.

Q. You don't mean over what it cost, material and labor? A. During the work.

Q. What does it include? A. It includes the time of the men doing the work and the materials employed in the work.

Q. Those are the items of material and labor I speak of and now you have got your executive officers and rent and all sorts of things. A. That is included as a part of the cost.

Q. What proportion of that cost is billed against the other companies? A. Each company bears its pro rata share according to the relative mileage.

Q. What proportion of the net cost upon which you figure the five per cent. is overhead? A. Why, I don't know, probably less than ten per cent.

Q. Do you know what the gross amount of business has been done by that company during the past year for your other companies on this five per cent. basis? A. I would say three or four hundred thousand dollars a month.

Q. Three or four hundred thousand dollars a month; that is, that company is earning five per cent. on that? A. It is earning that from its maintenance activities, but it also owns power plants.

Q. It produces the power and sells it to your operating company? A. At actual cost plus ten per cent.

Q. Do you know the cost of generating that power? A. Yes, sir.

Q. What are the chief elements of that? A. All of the operating expense of the power stations and the supervision expenses of the engineers, the coal, water, oils, etc.

Q. I am now looking at the income account of the Brooklyn Rapid Transit for the fiscal years ending June, 1909, to 1915. I notice a large item here running through each year of interest on certificates of indebtedness. Are those indebtednesses of this transit company that are held by this company? A. May I look at the statement? (Handed statement.) Those certificates of indebtedness are owned by the Brooklyn Rapid Transit. As from time to time improvements are made on any company's plant the respective company issues their certificates of indebtedness to the Brooklyn Rapid Transit at par and that item that you refer to is the income from those investments.

Q. Then the Brooklyn Rapid Transit Company reimburses your development company? A. The Brooklyn Rapid Transit buys this certificate of indebtedness either of it or any of the rest of them and keeps the certificate of indebtedness as an investment.

Q. Don't any of your operating companies pay as they go or don't they pay anything? Do they just issue certificates of indebtedness and the Brooklyn Rapid Transit buys those? A. They issue certificates of indebtedness only for capital improvements.

Q. This Transit Development Company has been a very profitable company. A. Well, I don't know why you say that.

Senator Lawson.—Is that the Company that operates over the Williamsburg Bridge? A. No, sir, it does not operate any lines.

Q. (Mr. Shuster.) I am now looking at the Transit Development Company statement; that is a comparative compilation of your various annual statements. A. Out of which the Transit Development Company pays a million dollars as interest on its debt.

Q. Now who owns this Transit Development Company? A. The Brooklyn Rapid Transit Company.

Q. It owns all the capital stock? A. Yes, sir.

Q. Do you know what dividends it is paying? A. It pays

about fifty per cent. on its capital stock. It has a debt I think, of something like twenty million dollars and a nominal stock capitalization —

Q. Is that a bonded debt? A. Bonded through certificates of indebtedness. I don't think its total income would amount to over seven and a half per cent. on its total investment.

Q. Well now, on October 1, 1913, your operating income was five hundred forty-five thousand six hundred seventy-eight dollars and seventy-eight cents making a gross income from all sources of one million and some odd dollars. Your statements show a deduction from gross income for interest on funded debt of a million and odd dollars. That all accrues to the Brooklyn Rapid Transit does it, on these certificates of indebtedness? A. Yes, sir.

Q. What is the term of those certificates? A. On demand.

Q. What? A. On demand.

Q. On demand. How many years have those certificates been accumulated? A. Twelve years.

Q. Since 1902? A. No, they run for varying dates. I don't know.

Q. You are able to take those certificates to your bank and discount them? A. No, sir, we pledge them as security to the Brooklyn Rapid Transit refunding mortgage.

Q. You pledge them as security to the Brooklyn Rapid Transit refunding mortgage; that is your first mortgage? And those funds are tied up in that mortgage? A. Yes, the Brooklyn Rapid Transit issues a four per cent. bond against the certificate of indebtedness of the constituent companies.

Q. Well, your net income of the Transit Development Company for the year 1915 was six hundred forty-five thousand seven hundred sixty dollars and seventy-five cents. That is more than a hundred per cent. on your total capital. A. Yes, sir, for that year.

Q. I have a memorandum here that 1913 was the only year in which you paid dividends of less than fifty per cent. A. That may be on the small capitalization. If you take it on the aggregate it will tell a different story.

Q. Now taking the general balance sheet of that same company for the year 1915, your construction and equipment item there is

sixteen million nine hundred eighty-nine thousand three hundred sixty-seven dollars fifty-four cents. Is that really tangible assets or is that a title you used against which these certificates of indebtedness are issued? A. That is the actual property against which the certificates are issued.

Q. And what does that property consist of? A. Power stations, cars, real estate, etc.

Q. That is really your fixed capital then, what it would be if you were a public service corporation? A. Yes, sir.

Q. These cars you furnish to the other companies, do you not? A. Yes, sir.

Q. Do you furnish those under some lease arrangement or do you sell them outright? A. We furnish them under a lease agreement. I would like to say right here.

Q. I would like to have any explanation. A. I would like to say this, because of an idea that you may have that the city of New York has gotten the worst of it on this transaction, through our treating as interest what you seem to think should be called a discount. When the contract was entered into the Transit Development Company had about three and a half million dollars' worth of cars that were in use on the elevated.

Q. Under leases? A. Under leases, for which the elevated was paying a rental. Now if the elevated had said to the Transit Development Company, "You can take your cars and sell them. We don't want them any longer. We are going to buy new ones under the subway contract on which we are going to charge six per cent. interest" it could have done so. We didn't do so. The New York Consolidated bought those cars from the Transit Development Company with its own money and paid about three million and a quarter for them and the Transit Development took a loss on the cars of about a quarter of a million dollars and we didn't ask the city to allow us to charge that to the cost of construction as we had a perfect right to do.

Q. Why didn't you? A. Because the cars were in use at the time the contract was made.

Q. The money that the Brooklyn Rapid Transit had was in use. A. That has nothing to do with this transaction.

Senator Thompson.— May I interrupt a minute? I would like



to know about the payment for legal services in connection with the Brooklyn Rapid Transit and Central Trust Company agreement of 1913 and also the voucher for Spooner and Cotton for thirty-five thousand for service at the same time.

Mr. Yeomans.— The bankers' counsel.

Senator Thompson.— That was paid evidently in April, 1913.

Mr. Yeomans.— It was paid after the subway contract was gone through.

Senator Thompson.— Those were incurred at that time? A. (Mr. Abel.) I am not sure as to just when they were paid.

Mr. Yeomans.— Senator, those were never charged to cost of construction.

Senator Thompson.— Apparently they were. Construction "B" account they seem to be carried in. A. (Mr. Abel.) Yes, that is true.

Senator Thompson.— This bond proposition was put through October, 1913, and this eighty-five thousand dollars seemed to have been fixed in April.

Mr. Yeomans.— It covered the whole subject with the arrangements with the bankers and provided that we should pay three concerns, who had to pass upon all legal steps and legal things pertaining to this matter, but none of those items have been charged to cost of construction and it was in this application for issuance of stock.

Senator Thompson.— Special counsel paid in reference to the other railroad suit.

Q. (Mr. Shuster.) You are entitled or will be entitled from time to time to have charged to construction the million eight hundred thousand dollars, being the difference between the par value of the bonds at sixty million and the ninety-seven at which you sold your bonds? A. (Mr. Abel.) Yes, sir.

Q. Now, has any part of that million eight hundred thousand dollars as yet been determined and allowed by the Commission and engineer? A. Yes, sir.

Q. It is being allowed you periodically? A. Yes, sir.

Q. In what amount? A. Well, that depends on the amount of expenditures.

Q. The more the expenditure, the more you use that up? A. Exactly.

Q. But by the end of the construction period you will have it all allowed? A. Yes.

Q. That was included in this interest item about which we have differed? A. Yes, you did ask me but there is no part of that.

Q. Some of that gets into every quarterly determination? A. Yes, sir.

Q. What was the last one? A. I don't just remember. I think it is December 31, 1914, that I brought over for Senator Thompson.

Q. Mr. Abel, Mr. Moss wishes me to ask you if the New York Municipal pays any income tax? A. It pays a tax on its bonded debt in the hands of certain holders under the Federal Income Tax Law.

Q. It doesn't pay any income tax on its capital stock? A. It pays an income tax on its actual income which it gets in the form of rental from the lessee but that is all.

Mr. Yeomans.—Six per cent. on the stock outstanding.

Q. (Mr. Moss.) Is that the Federal income tax. A. Yes, sir.

Q. But you are not paying that under the income tax law, are you? A. Yes, sir, that is the income tax law, the Federal Income Tax Law.

Senator Lawson.—What proposition of income tax have you paid during the last couple of years? On what amount of capitalization or income, the full amount? A. Well, the tax isn't computed that way. The tax is based upon net income.

Senator Lawson.—Well have you paid full taxes under the Federal Income Tax Law? A. Yes, sir.

Senator Lawson.—Have you been allowed anything on account of the city mutually joining in the building of these roads? A. The New York Consolidated is permitted to make certain deductions by reason of that.

Senator Lawson.— Well, what does that deduction amount to? A. Why, I don't know offhand. It might amount to thirty thousand dollars a year.

Senator Lawson.— How was that deduction permitted under the income tax law? A. It wasn't necessary. The Act provides for it.

Senator Lawson.— No the Act doesn't. There must have been some application by the income tax authorities. A. No, Senator, the act does specifically contemplate a deduction in the contract of this nature.

Senator Lawson.— Yes. Then you must make application to Washington to take advantage of that? A. We make our return and we show this deduction in pursuance with the provisions of the Act.

Senator Lawson.— There was a formal application made in this way? A. It wasn't. They sent for copies of the contracts and they hold this matter and that was in connection with an amended statement that we made when the Federal authorities modified certain rulings. We had filed our returns according to existing rulings and the Federal Department modified their rulings which inured to the benefit, not to the New York Consolidated only, but all our companies and we filed amended returns. All the returns were allowed except the New York Consolidated and they came over and examined our books and finally allowed it. It wasn't in the form of an application.

Mr. Moss.— Did the city authorities take the position upon that? A. The city authorities I think, went to Washington at the time of the passing of the Act and requested a modification be made in the language of the Act for the reason that all deductions that we made would affect the city.

Mr. Moss.— That is, as the city is interested in the profits it was interested in keeping down the tax? A. Exactly.

Senator Lawson.— Well, the city hasn't begun to receive any revenue out of these contracts. A. Not yet. We are operating, do you know, the most unprofitable part of this enterprise, but when we get to the profitable lines it will be a different story.

Senator Lawson.— Yet the Federal Government is making an allowance on account of these contracts? A. Certainly they are.

Senator Lawson.— And yet none of these moneys are going to the city? A. If the Federal Government didn't it would pile up as an increased deficit.

Senator Lawson.— Now you are an expert mathematician, you are an actuary, you have been going over these figures and the situations; when in your opinion, will the city begin to participate in the profits of this dual subway proposition as refers to Brooklyn? A. You would have to tell me how many cars the Public Service Commission is going to compel us to run that are not necessary for the business.

Senator Lawson.— That is a Yankee way of answering the question. A. It is positive though.

Senator Lawson.— Haven't you any definite way of knowing? A. I think that the city will get a part of the profits just as soon as we get to the fifty-ninth street section.

Senator Lawson.— In other words, as soon as you get into the city of Manhattan. A. If it doesn't we would make a very poor contract for ourselves.

Senator Lawson.— And also a very poor one for the city. A. The city has got a good contract so far as we are concerned because our lines are not operated to their maximum capacity.

Q. (Mr. Shuster.) What is the surplus of the Brooklyn Rapid Transit Company? A. At the present time? If you will give me the annual report I just gave you I will give it to you. (Handed report.) The surplus of the Brooklyn Rapid Transit Company at June 30, 1915, was ten million six hundred twenty-one thousand nine hundred sixty-one dollars forty-five cents and reserves of three million eight hundred eighteen thousand six hundred thirty-six dollars thirty-six cents.

(Adjournment until 11:00 A. M., Thursday, June 15, 1916.)

**JUNE 15, 1916**

The meeting was called to order at 11:30 A. M., Senator Thompson presiding.

Senator Thompson.— I am frank to say that I have tried as earnestly as anybody since I have been in New York to accommodate myself to conditions and to try and be as modest as possible in that regard. We came to the Municipal Building on the invitation of the Coroner. We then considered it and I think we received some twelve or fifteen more repetitions of that invitation and finally came on the understanding that the Coroners never used the thing over once or twice a week anyhow. During the last five weeks we have been — you can't ever tell where the Committee meeting is going to be and if there is a particular day that we need a room there is always a Coroner's Court and somebody dies but this week, knowing what day we would like the room or knowing what day this week we'd like the room, one of our men went and took it up officially and formally with the Coroners as to what days they would be occupying the court and was advised after due deliberation that Monday, Tuesday and Wednesday were all the possible days the Coroner's Courts could be held this week and whereupon we arranged to-day to have the room and we now find the Coroner's inquest is being held in the room.

I don't know what there is about it and I make this statement because I wish somebody would tell me, a stranger in New York from the country, here against my will, trying to do my public duty, how in the world and by what red tape you can get to whoever is in charge of the program of Coroners in New York, so that I can find out somehow, somehow, something authoritative as to how they act and when they sit.

Mr. Moss.— Mr. Morgan, you are the head of the banking firm of J. P. Morgan & Co.? A. (By Mr. Morgan.) Yes, sir.

Q. (By Mr. Moss.) And has your firm been interested in the financing of the extension of the subways in this city? A. The Interborough subways? Yes.

Q. Were you interested in the traction situation before your firm financed these recent improvements? A. No.

Q. Took no interest in it in any way, surface, underground or

overground? A. Well, many years ago we had an interest in building the subway; before that we had an interest in the Manhattan but we had not for a long time had any interest whatever in the traction propositions here.

Q. Were you interested with Mr. Ryan in former days? A. Mr. who?

Q. Ryan. A. How do you mean interested?

Q. In connection with traction matters in the city. A. I think not.

Q. You never discussed the traction matters of the city with Mr. Ryan? A. I never did. No, sir.

Q. Your firm? A. I don't know.

Q. You have no knowledge or information about that? A. No.

Q. Did the financial affairs connected with the recent extensions of the subway call forth any money from the Equitable Life Insurance Company? A. I think we sold them some bonds, yes.

Q. The Equitable owns bonds now, does it not? A. I don't know whether it sold them or not; I don't know.

Q. And has the Equitable held bonds of the Inter-Met.? A. I don't know.

Q. Have you any relation to the Equitable now? A. No; never have had.

Q. When did you first become interested in this subway situation? A. The present subway situation?

Q. Yes. A. In the early part of 1909 Mr. Shonts came to me and told me that he wished to devise some plan by which the subway could be made more available, enlarged in carrying capacity, that he wished to make a proposition to the city on that line and that he wanted to know if we wouldn't take the question up on the financial side.

Q. Was Mr. Shonts the first man connected with the Interborough Company who approached you? A. At that time, yes.

Q. But very soon you met other gentlemen connected with the board? A. We met them all; they are all known; we know them all.

Q. Yes, sir, to be sure. You knew Mr. Belmont very well, didn't you? A. I had known Mr. Belmont for many years.

Q. Mr. Freedman? A. No.

Q. You discussed these matters with Mr. Belmont? A. I think they were discussed with Mr. Belmont, but nothing definite and no arrangements were made with Mr. Belmont or with nobody except Mr. Shonts.

Q. All the definite proposals came through Mr. Shonts? A. Yes.

Q. But in meeting the other Directors you found that he was thoroughly empowered to represent them in details? A. Entirely.

Q. Did you ever discuss details with Mr. Belmont? A. I don't recall doing so.

Q. Or with any other member of the Board? Did you know Mr. Halley? Did you discuss it with him? A. Not that I know. My recollection is I am very sure that I didn't discuss any of these questions with anybody except Mr. Shonts with any operative force.

Q. When Mr. Shonts approached you in 1909, had any propositions been made to the city? A. I think not.

Q. What was their proposal, generally speaking? A. That the subway—that the Interborough would proceed to build additions to its subway lines for the purpose of carrying people, of giving a better service.

Q. Was the amount of money that was required mentioned? A. I don't remember how the thing shaped up finally.

Q. But at that time was the amount of money that was likely to be required mentioned? A. I think it was but I don't remember what it was.

Q. Do you remember what you said to him in the way of decision or encouragement on that first occasion? A. As I recollect it he came in and said that he wanted us to look into the subway question, that he had this proposal in mind and I asked him in the first place to assure me that he was empowered to deal with us and he said he had no relation with the Inter-Met, that he was dealing with nobody else at the same time. To all those three questions I got affirmative assurances and then we went ahead and discussed the question. My recollection is that Mr. Shonts put before us—this was after a period of considerably some weeks—he put before us the proposal that he intended to make to the city. He told and assured us and proved to us with figures and calculations that

would be advantageous to the Interborough if carried out and would supply the city with additional—

Senator Thompson.— The reason for this line, Mr. Mortan, is that Mr. Shonts testified that he, representing the Interborough, talked with you personally. A. Well, I believe that is the case. There were no negotiations with anybody else I am sure, with me, personally. I was not then at the head of the firm; my father was alive but he was abroad at the time.

Q. (By Mr. Moss.) Now, on March 10, 1909 the Interborough applied to build the Sixth Avenue extensions and third track the elevated lines at its own expense. Was it prior to this proposition of March, 1909, that you talked with him? A. I don't know.

Q. Is it your recollection that it was before any proposition was made to the city? A. My recollection is that Mr. Shonts, before he was willing to make any proposition to the city, was that he had the finance.

Q. That would put it early in 1909? A. Yes.

Q. That application was denied as was also the application of June the 30th, 1909 and I supposed he discussed those denials with you. A. Undoubtedly. We had endless interviews at that time.

Q. I find in the record a letter by Mr. Morgan to Mr. Shonts, June 24, 1909. I think that is the first correspondence that has been shown us. A. I think that would probably be the first. I don't know if you have been shown everything there was.

Q. Yes, sir, I have seen quite a good many of them. Now, this letter said: "I figure it would be as well to put on paper the understanding arrived at as far as any understanding was arrived at this morning, between you and Mr. Belmont on the one side and J. P. Morgan & Co. on the other." It was understood then that the Interborough Rapid Transit would apply to the Public Service Commission to build subways. "It is understood that the Company is free from any other claims on it." A. That means that he was dealing with nobody else.

Q. That is just what you said. "I advised you that in our opinion the financing of the improvements and the extension to the Manhattan elevated presented no difficulty but so far as the extensions to the Interborough subway were concerned a plan



had to be devised to receive a reasonable share in the fund in addition to the mere interest on the bonds which had first been contemplated. What did that mean? A. That meant if the Interborough Company was going to increase it very largely they would have to have a stock increase. This was before the city money could be put into it.

Q. This was when the Company was talking about the use of its own money? A. And my opinion at that time was that it would be necessary of the Company to increase its capital stock as well as its bonded indebtedness in the matter in order that the people who put in the money might feel that they would get some share of the profits if they could.

Q. Exactly, and have some share in the management. A. Yes.

Q. It is a business principle that those who put in the money and those who are affected by the transaction should have voice in the management. A. I don't know that I thought of that. We had to get the money from other people and we felt that those people would probably require the opportunity of a higher return than they could get from bonds. I don't know that the question of management came into it at all.

Q. Well, hadn't you that in mind? A. I don't know.

Q. Might have a voice at least in electing directors? A. I don't think I bothered about that very much at the time.

Q. Don't you think that is a sound principle? A. I think very likely it is a sound principle.

Q. I don't think that was in my mind at the time.

Q. It is easier to prevent improper expenditures than it is to provide for them after they have been made. A. Considerably easier.

Q. Yes, and therefore wise investors, when they are going to invest a lot of money in an enterprise of this kind — A. We were not contemplating an improper investment.

Q. No, of course not, but you would not want the railroad to make any improper expenditures of money. It would be a lack of economy to go into wild and foolish procedure. A. No.

Senator Thompson.—You wanted the fellow that had the money — you wanted him to get something out of it. A. Well, he had to have some inducement to make him put the money up.

Q. (By Mr. Moss.) On June 25th Mr. Shonts replied to that practically acquiescing. So we go on with the correspondence, taking in letters of June 26th, June 27th, and we get to September 15th, 1910. A. A year and a bit afterwards.

Q. Yes. A. Yes.

Q. Where a plan for financing is definitely discussed. Now, there was a letter that was sent to your firm in March, 1910, which did not appear among the letters that were originally furnished to us, and which went into the record sometime ago in the testimony of Mr. Fischer; and that was a letter of March 10th, 1910, by Mr. Shonts to Mr. Morgan. A. Or the firm.

Q. It was a communication which enclosed assent to you. A letter dated March 10th, 1910, by Mr. Shonts as president to William R. Willcox, Chairman of the Public Service Commission. I am simply saying it didn't come out originally when this investigation was held by Mr. Colby. In the examination of Mr. Fischer; but effort was made at that time to get all this correspondence. Now, this letter of March 10th, 1910, by Shonts to Willcox was a tentative proposal. A. You don't mean that an effort was made to get it from us — that is, J. P. Morgan & Co.?

Mr. Morse.— No, Mr. Lindabury, there was no effort until I came to you.

Mr. Moss.— I am not making any reflection or seeking to make any reflection on J. P. Morgan & Co. I am merely showing that this letter did not appear until Mr. Fischer's examination. All of this correspondence came out in the examination of Mr. Fischer. All of this Morgan-Shonts correspondence came out in the examination of Mr. Fischer, and at that time, I judge by the context, Mr. Colby made an effort to gather together all the correspondence. But it would appear that this was overlooked at that time, and it was brought out when Mr. Perley Morse made an examination of the Morgan files and found this letter.

Senator Thompson.— As far as that is concerned, why, Mr. Morse, through me, requested your firm, and it immediately complied with the request.

Mr. Quackenbush.— If that was not put into the record it was because it was not furnished by Mr. Colby or Mr. Dawson at the

time; because they had access to our files. I know Mr. Moss doesn't intend —

Senator Thompson.— I presume that is the reason, Mr. Quackenbush.

Q. (By Mr. Moss.) Now, the point of this communication — which is produced from Mr. Morgan's files to Mr. Perley Morse — is that Mr. Shonts had drawn up a formal proposal to the Public Service Commission for an extension of the subways; and this letter was dated the 10th of March, 1910. It provided for an extension of the subway at the expense of the Interborough Rapid Transit Company.

I want to ask you if you recall discussing that with Mr. Shonts. (Handed photographic copy of letter to witness.) A. I recall, as I see here, the Manhattan extension on Madison Avenue and the moving platform underneath the Broadway Elevated at Union Square up to 42nd Street, I think it was to go. I recall discussing those things with Mr. Shonts.

Q. Do you recall Mr. Shonts saying that there had been practically an agreement reached with the Public Service Commissioners on that proposition? A. No, sir.

Q. That was a meeting on the night of March the 22nd, at the home of Mr. Willcox which was attended by representatives of the company and various members of the Public Service Commission and it has been stated by Mr. Willcox and stated by Mr. Hartness and stated by others that practically an agreement was reached on the night of March the 22nd on substantially that basis. Well, did you know that there was any such agreement reached? A. I don't recall. There were so many suggested arrangements put in, there were so many discussions and that meetings at Mr. Wilcox's house that I don't recall definitely any one of them.

Q. Well, you were taking a lively interest in these matters and I assume that Mr. Shonts attempted to keep posted upon all the agreements? A. I presume I heard of it.

Q. Can you not have any recollection at all about a conversation in March, 1910, or thereabouts, with Mr. Shonts in which he told you that substantially an agreement had been reached? A. No, I don't recall it.

Q. In which the company's own money would be used? A. I couldn't be definite about it.

Q. Did you at any time in that early period make any objection to the using of this company's own money? A. None whatever.

Q. Did you know of any suggestion that was made that it would not be necessary for the company to use its own money, that the city could be induced to spend some of its money? A. Some of its money, yes, sir.

Q. How soon was that suggestion made? A. I don't know. It was the Summer of 1910, I think.

Q. Well then, we are getting down pretty close to that letter. It would appear, Mr. Morgan, from the evidence that has come to us that a substantial or tentative agreement was reached on the night of March 22nd, and on the following day the directors of the Interborough gathered and a report was made by Mr. Shonts substantially that this paper which had been pending before you and before the directors and had been more or less modified by subsequent data, had been reached, but the Board of directors suddenly disavowed it. The Board of Directors refused to accept Mr. Shonts' reports and passed a resolution committing the entire matter to the Executive Committee with power to handle same, do you recall that? A. I do recall an event of that kind. I recall the conversation as — I don't recall the conversations leading to it, nor wholly the causes.

Q. Well, was it you that suggested that arrangements ought to be made by which the city would contribute? A. I shouldn't think so. I don't know who suggested anything. I mean to say, the action in the course of talk. I don't think I was the first one to suggest that. As it seemed to me at the time and as it has seemed to me since, the city wanted more subways, they were prepared under the change of law at the end of 1909, to put in their own money for subways. The Interborough wanted to make more subways, if it could make them usefully. Why shouldn't the two make a joint subway?

Q. Well, you knew that the Mayor and the Controller and the President of the Board of Aldermen, the Borough Presidents, had all expressed themselves strongly in the election campaign against any plan except the city building its own subways. You knew

that, didn't you? A. I suppose I did. I was not present at the campaign, I think I was in Europe at that time.

Q. But someone who was kept you informed; and as one who was going to finance this proposition you were not asleep to that fact? A. I certainly was not.

Q. Didn't you look upon these men as enemies of the Interborough? A. No. I looked upon those men and the Interborough as people who wanted to have a proper system of subways in New York. Now, if those people felt the proper system of subways in New York was to be done by the city putting its money and building, owning and operating a subway, why they had a perfect right to do so.

Q. Lets take the Mayor as an illustration. Did you know that he had violently denounced the Interborough and the whole combination? Didn't you know that? A. No.

Q. Did you know that he had declared he never would enter into any arrangement with the Interborough people? A. No, I didn't know that.

Q. Didn't you know that he had declared that the subways must be built with the city's own money and that they could be built with the city's own money? A. I didn't know that, no.

Q. Didn't you know he had declared that by increasing the tax assessable valuation, money could be raised? He did indeed increase it nearly a thousand million dollars that money could be raised for the building of all subways that were necessary. A. I don't know whether I knew that or not. As I say, this thing is spread over a great deal of time and a great deal of excitement in that election. I was abroad at the time and did not follow what was said at that time.

Q. Well, in March, 1910, had anything happened so far as you knew or were informed, which gave the directors confidence to throw out an arrangement that they had practically agreed upon and stand up resolutely for city money? A. I judge that the directors found themselves in a position of having discussed a proposition with the city authorities which the city authorities, should the directors become involved in expending all its money, could ruin. Of course, it was a position they could not take up.

Q. Well, the city authorities had a copy of this letter, although it had not been filed with the Public Service Commission for-

mally. They had a copy of this letter. The terms of it had practically been agreed upon and suddenly someone says, "It isn't necessary," it seems that way, "for this company to spend its own money," and did get the city to do it. A. I think what they did say was, "It isn't wise for this company to spend its money unless the city is going to make that expenditure."

Q. In which the city was to accept this proposition of the Interborough and they practically agreed upon it with no competition at all? A. I don't know.

Q. It speaks for itself.

Q. (By Senator Thompson.) Did you ever have any conference with Mr. Wilcox? A. We had a great many conferences with Mr. Wilcox.

Q. Did Mr. Cedarstrom represent you during this period? A. Not at those conferences.

Q. He has represented you frequently? A. Yes; many times.

Q. And in those conferences, hadn't he your interests as the prospective financing power—hadn't he your interests in mind? A. Yes.

Q. And when Mr. Stetson spoke in these conferences, his word would be taken practically as an expression of the opinion of J. P. Morgan & Company, wouldn't it? A. I should think—probably, yes.

Q. Didn't some one suggest, or wasn't it reported to you that some one suggested in these conferences that there was an easier, a cheaper way of getting this transaction through than by the company using its own money? A. I don't think so. I think—if I may put in a comment of my own on this thing—that you are approaching the thing on the line that the Interborough found it would be cheaper and more advantageous to us to use the city money to do the business. Now, that wasn't my understanding of the point of view of the Interborough at the time, and hasn't been since. My understanding of the Interborough was that it could not, from its own money, construct a subway which would be rendered valueless by a competition parallel to the other. Therefore, I remember perfectly well one interview which hasn't been brought out. I went to see Mr. Shonts, and I think Mr. Shonts—and I think Mr. Davidson was with me too—we went up and

saw Mr. McAneny one day, I think this was in the summer of 1910 and we said. "It seems to us that the question with reference to the building of the subway is, has the city enough money to build its own subways, all that it wants, without using private capital?" And Mr. McAneny at that time was of the opinion that they could not construct sufficient subways to fill the needs of the city without the assistance of private capital, owing to the debt limit being so close to the borrower. Therefore, the question was: Can we not arrange with the city, if private capital is needed, that the Interborough should acquire private capital to put into the subway construction, the city supplying its part of the capital? Then the question was threshed out through a long period of time as to the relative treatment that the private capital would receive. You have got to induce private capital to come in, city capital can be directed by the city on firms, but private capital has got to be bought.

Q. (By Mr. Moss.) Didn't you know that in 1909 General Tracy found that the city had a borrowing capacity of \$100,000,000? A. They couldn't use that money for subways.

Q. They could make a start, couldn't they? A. That was the question.

Q. And didn't Mr. Gaynor immediately say that they could start upon the borrowing power of the city and construct subways as they went along and the increase of value of real estate would all help the situation and that the city did not have to lay down to the financiers at all, but could raise its own money and build the subways? A. I don't know what Mayor Gaynor said about it. I only tell you the way we approached it. Q. I know, but, Mr. Morgan, don't you know that there was a deliberate attempt made by a number of persons prominent in these matters to minimize the power of the city to build its own subways and to raise a false issue that the city hadn't sufficient capacity? A. I do not.

Q. You never heard of that? A. No; you are talking about a deliberate attempt—I don't know anything about it.

Q. Was there such an attempt made? A. I don't think there was.

Q. Did Mr. McAneny himself make any public utterances questioning the power of the city to raise the money—a sufficient amount to do this work? A. I think he did.

Q. That is what I thought.

Senator Thompson.—Wasn't there some act passed that year that in some way resulted in increasing the debt limit of the city?

Mr. Moss.—Yes. There were all sorts of things done, Mr. Chairman, to increase the power of the city to raise money for the express purpose of building subways, and as you look over the history of this thing, it seems that it was met by a deliberate movement—I don't say that Mr. Morgan was in it. When I asked you, Mr. Morgan, if you heard of it, I didn't mean to intimate that you were in that, but it was met by a deliberate movement on the part of a number of persons prominent in city affairs to minimize the power of the city to make it appear that the city was without the power to raise the money.

Senator Thompson.—Now was that referendum passed before or after General Tracy made his report?

Mr. Moss.—That was, I think, in the early part of 1909.

Q. (By Mr. Moss.) Now, did you know that close to the period of this letter of March, 1910, there were several meetings between Mayor Gaynor and Mr. Shonts? A. I know there were one or two.

Q. Did Mr. Shonts tell you about meeting him down on Long Island there at St. James? A. I find in the files a letter from Mr. Shonts, telling me that, in accordance with what he said he would do, he was sending me the statistics that he had taken down to Mayor Gaynor, and that is my only recollection of that thing.

Q. Did he tell you he was going to see Mr. Gaynor? A. I don't recall it.

Q. Did you ask him how it happened that he managed to get in the pleasant relations with Mayor Gaynor in view of the attitude he had taken during the campaign? Well, as I said, I was not aware of Mayor Gaynor's attitude during the campaign.

Q. Well, it seems remarkable to me that you were here, and everybody in America and almost in Europe knew what the Mayor said about the transaction, and you didn't. A. I was about 3,500 miles from here and trying to get a holiday, and didn't pay any attention to it.



Q. Did Mr. Shonts tell you how he got to Mayor Gaynor? A. No.

Q. Had you ever known Mayor Gaynor before these matters were presented to you? A. I had known Mayor Gaynor, I suppose.

Q. He never expressed to you personally his views about people who were engaged in the traction steels? A. I don't think he did, sir.

Q. Not even about the surface railway? A. No; I did not discuss the surface railway with him.

Q. Weren't you familiar with his point of view? A. No.

Q. Or, was the point of view between you two gentlemen so well understood that it wasn't necessary for you to discuss such things? A. I don't know what the reason was, but I certainly didn't discuss this matter with Mayor Gaynor.

Senator Thompson.—Well, we know pretty near everything that you did, that is, we get through the examination of Mr. Shonts, you would each sit down and write each other a memorandum about it afterwards. A. I didn't write him any memoranda.

Senator Thompson.—He did to you. A. He kept me posted either in writing if it was big or by word of mouth. I say the details would go from him.

Senator Thompson.—Mr. Moss would like to know what talks you had so far as you remember, that you didn't have a big memorandum of. A. I have no description from Mr. Shonts of any of his relations with Mayor Gaynor at all.

Senator Thompson.—It appears on March 22, 1910, he made a nice offer to the city. The Interborough make a better offer than had subsequently been accepted by the city, they built all these railroads with their own money and the city got them at the end of forty-nine years, just as they do now but the city didn't have to put up the money that was practically the substance of that offer of March 22, 1910. Now, that was submitted to Mr. Wilcox and talked about until 2:00 o'clock in the morning and a directors' meeting authorized it to be done if the Executive Committee wanted to do it. Then for two or three weeks, they didn't talk about any more and the first thing you know, they were talking

about an entirely different situation. What we want to know — Mayor Gaynor apparently was quite friendly. He was so friendly, he was going to be an arbitrator. A. I don't know anything about that.

Mr. Moss.— Didn't Mr. Shonts report to you the change of the public attitude of the Mayor? A. I don't think I discussed that with Mr. Shonts.

Q. Now, the situation — Mr. Chairman I want you to understand my point of view, and Mr. Morgan too — it would seem that up to the time that the new administration came in, January, 1910, there had been efforts made to expand the debt limit of the city, to increase its borrowing power, its money raising power, with direct reference to a plan projected by all of the candidates who were successful at that election that the city should deliver itself from the grasp of certain people that they discussed with unpleasant language that had the city by the throat. Traction people they called them, sometimes they spoke of them as the Metro and sometimes as Interborough people, but they were going to deliver the city from the grasp of these people who were exploiting the city's traction facilities for their own selfish purposes.

I say it is very easy to see that every effort was made too, to increase the borrowing capacity. To release bonds that had counted against the debt limit and to show how the city could do that had the Mayor in particular showed that starting out building as the city could, it would so increase the taxable valuations in districts which would be opened up by the subway that the increase of value in the new tax would bring in all the help that the city needed.

And the Interborough Company recognizes that situation and makes all of its propositions upon the basis of spending its own money but suddenly there is a change. We find the debt limit being dissipated. We find people who had been urging that the city could do all this business, suddenly changing their— at least, the tense of their remarks.

We find discussions of the expenditures which the city has been put to in this, that and the other thing. We find in the newspapers of those days, early in 1910, statements that show you or others the city would not be able to build the subways because the

money that had been released had been used up. Some spoke about bridges and some spoke about docks down on the water front below on the bay on the Brooklyn side. In various ways money had been used so that we reached the point suddenly, which seems to be in March, 1910, where the Interborough which had yielded to the apparent desire and design of the public officials so far that they had made their propositions entirely with their own money, suddenly changed front and showed great courage, great faith in their position. Suddenly changed their front and never from that time made a proposition where they would do this work with their own money but demanded that the city go in with them and furnish at least half the capital.

Senator Thompson.—The witness understands now. A. I see what you are aiming at, Mr. Moss.

Mr. Moss.—That is the point of view of many people and I want to probe it along that line because I want to get the fact—maybe it is so and maybe it isn't—but Mr. Morgan it seems to me should know something about the facts of that period if he had a tremendous financial interest in this thing as it ultimately turned out and I want to see if he didn't adjust his mind, his financial mind at least, to be practical situation as everybody else saw it in those days. He must have considered it even though he was in Europe and came back to a situation which he hadn't been keeping so closely in touch with while he was away.

Didn't you know, Mr. Morgan, that there was an effort running through 1909 and up to the end of 1910, apparently to expand the city's borrowing power? A. No, I did not.

Q. Didn't you know that there was a movement largely carried on by the successful candidates at that election to have the city build subways with the express purpose of delivering the city from the monopoly of the Interborough Railroad? A. I know that there was a great demand and a great deal of talk about the city-built subways. But, "for the express purpose of delivering the city" sounds a little bit on the argumentative order.

Q. I am not using my language. I am quoting. I am not arguing with you, I am quoting what the Mayor and the Controller and various people said. I remember now, Mr. Prendergast in one

of his speeches said that if Mr. Shonts came to the City Hall, he would have to come hat in hand. He used language of that sort.

Didn't you become aware of a movement in 1909 and 1910, which questioned the borrowing power of the city, the financial position of the city, and which opened the way for subway movements which would not be altogether at the expense of the city? A. Of course I did.

Q. Did Mr. Shonts discuss those things with you? A. I presume so, yes. My recollection of the thing is that it came to me this way. Mind you, we were so to speak, employed by the Interborough to get the Interborough offer financed.

Q. Did Mr. Shonts go as far as to tell you that the gentlemen who in the political campaign of 1909 had been talking for city building, city construction, were now discussing the thing on the other view and opening up the possibility of joining with the Interborough in financing. A. I don't recall the details of the conversation. Probably he did.

Q. Did he tell you that when he went down to see the Mayor at St. James, he went with Mirebeau Towns? A. I don't think so, I don't know.

Q. Did he tell you of any meeting he had at the Mayor's office with Mr. Willcox, the Mayor and himself? A. I don't recall it. I knew that he was having constant interviews. He kept telling me about interviews he had been having.

Q. Now, in 1909, the Mayor was denouncing Interborough and denouncing the whole situation. All this is in evidence so I won't take time to repeat it. But in March, 1910, he was offering to Mr. Shonts to act as an arbitrator between the Interborough and the Public Service Commission. Did Mr. Shonts tell you that? A. I presume he did.

Q. Did you ask him how he had accomplished that reversal of form? A. I don't know what I did ask him. I can't remember the interview but judging from that, all I should say — mind you this is only my conclusion, I don't remember the interview — but his letter says he has promised the statistical information which he has shown to the Mayor and I presume that his figures convinced the Mayor.

Q. You think it was just figures. A. I think so. If you mean to ask whether it was dollars besides, I don't think it was, sir.

Q. I don't mean to ask that. A. That was the implication in your question.

Q. Not necessarily because there are other ways in which men are induced to change their position than mere paltry money. A. Well.

Senator Lawson.— Maybe he read that in your question.

Mr. Moss.— It is interesting to me, Mr. Chairman, as it was yesterday that people out of their minds read into this thing. A. Perhaps you might revise the form of your question, Mr. Moss.

Q. No, I shan't revise the form of my questions because they seem to be pregnant. A. Mr. Shonts being ready to go on with his proposition of March, 1910, suddenly stopped by the adverse vote of his board of directors. Their attitude surprises the Public Service Commission, the express their surprise in the letters which they write.

Senator Thompson.— That is a mistake about the Board of Directors. There was no adverse vote by the Board of Directors.

Mr. Lindabury.— Mr. Moss said Executive Committee a while ago.

Mr. Moss.— It should be Executive Committe because the Board of Directors are bound by it.

Senator Thompson.— I don't know the difference between Executive Committee and Board of Directors.

Mr. Quackenbush.— They have the same power in the by-laws.

Senator Thompson.— What do you have the Board of Directors for?

Mr. Quackenbush.— The Executive Committee has full power in the absence of the meeting of the board.

Mr. Moss.— Mr. Willecox is so surprised that he writes his advice in a letter to the Mayor. Mr. Harkness expresses his surprise in the pamphlet which he wrote. Nothing more is done until July, 1910, when your company makes a proposition which involves the use of city money and that proposition is sent through

the hands of the Mayor as well as to the Public Service Commission and it leads to the writing of a letter by Mr. Willcox to the Mayor in which he comments very sharply upon the change of position of the Interborough Company and recalls the fact that during 1909, the Interborough Company published advertisements in the newspapers speaking its desire to make all these extensions at its own cost. Now, I have asked other gentlemen, and I must ask you the same question.

Do you know what it was that gave the Interborough Company the confidence, as against public officials who had expressed their belief to them to put in a proposition that was so much stiffer than the one withdrawn in March, 1910? A. I presume they had good business reasons for doing it.

Q. No doubt they did have good business reasons for doing it, and I have been trying to find out what they were, and I want to see if that was talked over with you so you can give any light upon the question. A. No, I don't recall.

Q. Well, then we come to December 5, 1910, I think it was when another proposition is made. This proposition is stiffer yet, and I am satisfied in passing that both of these propositions failed to include preferentials as they grew up later and they provide for giving the city part of the profits for the first five years and dividing the profits afterwards. They were rejected.

Now, those propositions, taking them from March, July, December, they grow stiffer and stiffer from the standpoint of the Company while the city is rejecting and rejecting even such terms as I have mentioned as the proposition is growing stiffer and stiffer; I say yours because you have a financial interest every time the proposition is rejected, the next one is stiffer.

Did you ever discuss with Mr. Shonts or with any of the directors the policy that met opposition and defeats inflicted by the city officials by stiffening and increasing the burden of the applications. A. In any conversations of that kind that took place, I cannot recall them with definiteness. My only question was, is this proposition that you are putting up going to be safe for the bonds? I didn't discuss with Mr. Shonts the general policy, with the city or anything of that kind. That wasn't my business. I was not a director of the Interborough Company. I had no relations to it at all except at the moment of financial adviser. If I got from

Mr. Shonts his statement backed up with Mr. Gaynor, his auditor's figures, his estimates showed a satisfactory situation for the money to be involved, I asked no further questions because I thought that the city officials and the Interborough Company manages their own trade.

Q. Did you want them to make a trade with the city? A. Only if the trade was going to be made satisfactorily.

Q. I mean a satisfactory trade. A. The only reason I bothered about the thing at all was that I wanted to see new subways.

Q. New subways? A. It meant that the people of New York were being carried indecently.

Q. It meant improvement in real estate values, and it meant no harm to the interests of J. P. Morgan? A. I hope not.

Q. Certainly not. A. There was business in it.

Q. You were spending a lot of time and trouble keeping track of this thing and conferring with Mr. Shonts? A. Yes.

Q. If a safe arrangement could be made. A. Yes, I wanted to have it made naturally.

Q. Then, I would think that this matter of policy in dealing with the city would be of great concern to you, whether a proper policy was being followed when the city turned down these propositions again and again, whether a policy of conciliation might not be ordinarily a better policy of aggression. A. That had nothing to do with the financial policy of the company.

Q. I know, but it would have to do with doing business with the city, with having a trade made. A. The city always had the right to build its own subway.

Q. No doubt about that, but you wanted it to go through if it could be done safely? A. If it could be done properly, yes.

Q. Did it ever occur to you that the policy of dealing with these city officials was a matter you ought to be interested in? A. No, I had nothing to do with the dealing with the city officials nor could I, Mr. Moss. It wasn't my affair. I don't butt into other people's business.

Q. Did you know these men well enough to talke about it? A. Yes.

Q. Involving the city as well as your own affairs? A. One thing that was important to us was that the transaction should be

safe and creditable. Now, the way that the Interborough chose to approach the city officials and the officials to treat with the Interborough and work it out between them was a matter in which we had no concern, and I shouldn't have felt authorized to recommend lines of policy.

Q. Wasn't your opinion asked? A. As to how they should? I don't think it was.

Q. As to these matters that have been spoken of. A. I don't think it was.

Q. More propositions coming into the field of the Brooklyn Rapid Transit, a split in the Public Service Commission, antagonisms in the B. F. E. and A., a generally mixed up situation which was involved by a certain number of flops, as they have been called. It is not an elegant expression, "Certain flops" but it seems to have gotten into the language, anyway. A. Perhaps you put that word into the language of the Nation.

Q. No, I found it and I took it. It saves a whole sentence to just say "Flop."

Now, during 1911, it would appear that with all of these element coming into the situation, all these antagonisms, all these uncertainties, the position of the Interborough became stronger and more insistent, its demands increased so that when you get through the year 1911 and into 1912, you find the Interborough in a position far in advance of anything they had thought of in 1910 in the demands made upon the city. Now, I want to cover the whole matter in my questions and, therefore, I ask you was the situation of 1911, that I have just rudely delineated, brought to your attention at all? A. Not on those lines, I should say, no.

Q. Do you know how the preferential got into this business? A. No.

Q. Never were told? A. don't recall it at all. Probably, I should say, if you want my guess at all.—

Q. Well, if it is founded upon a real opinion. A. Founded upon what knowledge I had of the situation at the time. I should say it was done in order to provide the necessary private capital to carry out the vast plans which the thing had at that time taken shape in.



Q. Something that the bankers insisted upon? A. The bankers insisted upon a safe return for their money.

Q. Well, was it proposed by the bankers? A. I don't know.

Q. Was it proposed by any public official? A. I don't know. I don't know who it was proposed by.

Q. Now, in the next end of this situation comes the third tracking—A. Yes.

Q. Which was underway before the other business was finished up—A. Yes.

Q. When did you first hear of the Steven's proposition and where were you when you heard of it? A. This is part of my evidence before. You have got my evidence before. I haven't anything new to say about that.

Q. I am only going to touch that lightly. I have got your evidence right here. I want it to fit into the story right here. Were you in England when you heard of this? A. I think I was here.

Q. Now, since you testified before on this matter have you been able to recall any letter that you wrote to Mr. Shonts? A. Any letter sent to Mr. Shonts? No, none at all.

Q. In connection with the Steven's contract? A. No, none at all.

Q. Do you believe there was no letter or that there might have been? A. I believe that there was no letter sent to Mr. Shonts on that subject.

Q. And will you recall what your statement to Mr. Shonts was? A. My statement to Mr. Shonts at the time I asked him to come in?

Q. Yes. A. I recall no more than I have in my testimony before, that is to say, I said to him, that I understood from Mr. Lane and Mr. Reed that they were much disturbed about the Steven's contract and that it was a contract that the Board couldn't approve of. It was extravagant for the company and would do harm to the bonds and I recall Mr. Shonts giving me the assurance that nothing should be done in that contract unless the whole Board did approve it.

Q. Do you recall the basis of your objection to that contract? A. That it was extravagant to the company.

Q. Extravagant in the percentage? A. That he shouldn't give to Stevens ten per cent., I think that is the figure.

Q. It probable was. It would appear from the evidence that that was the figure, although, there has been some hitching about it. A. My recollection is that ten per cent. was in my mind at the time that they shouldn't pay Stevens for he had not any plants and wasn't a contractor, and he told me that of course, it wouldn't be done unless the Board approve and agreed to it. My responsibility then terminated.

Q. Yes.

Well, as I want to swing into the Gillespie matter, perhaps you had better take your recess at this time, Mr. Chairman.

Senator Thompson.—Can you return at two-thirty, Mr. Morgan? A. I would like to get finished as soon as possible so as to get an early train.

Senator Thompson.—The meeting will suspend until two-fifteen P. M.

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### AFTERNOON SESSION.

Meeting called to order at 2:15 P. M. Senator Thompson presiding.

Q. (By Mr. Moss.) Now, your mind having been directed to this third tracking situation by the discussion over the extension matter, did you pay any attention to the Gillespie business when it came up? A. (By Mr. Morgan.) None at all.

Q. It was the same situation? A. Not unless somebody objected. I had Mr. Shonts' assurance that he would do nothing except what the directors were satisfied with.

Q. Well, it was a contract for fifteen per cent. and as it has turned out and as the evidence has abundantly shown us here is. the contract was let out, part of it done by Terry & Tench, well known contractors, at a profit of about four and a half per cent. Gillespie got fifteen per cent. for taking the contract.

Mr. Lindabury.—Have you the date of the Gillespie contract in mind?

Mr. Moss.— I haven't it right at this minute. The date was February 13, 1914.

Q. You were in the country then. A. Oh, yes.

Q. And right on the job because this financial end of it had gotten to be a pretty live thing? A. Yes, very live thing.

Senator Thompson.— That contract was advertised for around the 21st of December and bids were received on the 21st of December and from that time on negotiations were going on which culminated in the contract on the 13th of February, 1914. Didn't you notice that the Gillespie matters were accounted publicly? A. No, I didn't know anything about the Gillespie contracts whatever.

Mr. Moss.— It was not publicly let. There were a half dozen contractors notified to bid and one of them, by the way the other day, came here and testified that he had been told by his lawyer to bid.

Well, we won't get into that.

Senator Thompson.— There is a thing I want to say here now in reference to Mr. Morgan and his appearance before the Committee. So far as I know, and I have been advised by people on the Committee that everything it has asked Mr. Morgan or his firm has been complied with.

Mr. Moss.— All requests have been complied with.

Senator Thompson.— And even going out of their way to make photographs of copies of papers for us which is very much appreciated.

Now, the question of Mr. Morgan's personal appearance before the Committee came up in a very peculiar way and the time of the happenings can't be the fault of the Committee or the Chairman of the Committee, but last February before Mr. Moss was in the Committee, one day the memorandum of Mr. Lane, or what purported to be a copy of it, was submitted by Mr. George W. Young, and was shown before the Committee.

Now when we take testimony of Mr. Young and Mr. Lane or anyone that has been a director, we regard that that gets the testimony from the most responsible sources that we can know. We

have to pay attention to it and on that day that memorandum was shown before the Committee and that afternoon it happened that Mr. Morgan went to Europe, nor was I to blame for the fact that you didn't tell us that you were going or anybody else. With that memorandum shown and with the fact that it called on you and the fact it was you personally that had the talks and the fact that these memoranda said that there were certain comments and obligations entered into that couldn't be made a matter of writing, why, it became necessary in order that the Committee could discharge its proper duty, as we saw it, that we talk with you instead of anybody else concerned.

Now, no one in the Committee ever thought of criticising you because you went to Europe and transacted your business and you happened to go that day, but that is all there is to that. It isn't as an apology at all. It is meant as a statement of the circumstances. This Committee has certain duties and we have to call on the witnesses who are the most prominent and responsible citizens in the matter and we can't make discriminations or distinctions as between one man or another. That is our attitude and anything further that might have been printed on the subject is wrong.

Mr. Lindabury.— I am very glad that you made the statement, but there was a suggestion made in the newspapers that Mr. Morgan had gone to Europe to evade this Committee.

Senator Thompson.— That was never said by the Chairman of this Committee.

Mr. Lindabury.— I am very glad to know of that.

Mr. Morgan.— I am very much obliged for your statement, Mr. Chairman .

Q. (By Mr. Moss.) This Gillespie proposition came before the Public Service Commission and was severely criticised. It got into the newspapers, did it not?

Senator Thompson.— What is that?

Mr. Moss.— The Gillespie proposition.

Mr. Quackenbush.— The Stevens' proposition.

Mr. Moss.— Was that entirely the Stevens'?

Mr. Quackenbush.— Yes.

Mr. Moss.— Then I withdraw that.

Mr. Shuster.— The Gillespie matter did not come before the Commission in its original conception until sometime later when they sort to have the approval of the Commission placed upon the Gillespie contract certain extensions or connections, rather.

Mr. Moss.— After the contract had been in force?

Mr. Shuster.— That was covered by the certificates and not by the contract between the city and the Interborough and it was after the work had already progressed under the Gillespie contract. The Manhattan certificate does not require in express terms the submission of that part of the contract for expenditures prior to their making. All of the other certificates do.

Mr. Moss.— It was in my mind that there was a criticism of the Gillespie proposition by Mr. McAneny in the public prints.

Mr. Shuster.— Well, that was when it came up for this approval of the connections, not in the original contracts.

Mr. Moss.— The fact is there.

Didn't the newspaper writing of that contract come to your attention? A. (By Mr. Morgan.) I don't think it did. I do not recall hearing anything about the Gillespie contract.

Q. Did you know Mr. Gillespie? A. I have met him once or twice.

Q. Before the contract? A. I think probably, yes.

Q. Well, Mr. Gillespie was known to other members of your concern better than you? A. Yes.

Q. Was he a trustee in the Equitable? A. I don't know who the trustees were.

Q. It would appear so. A. All right, then.

Q. We are speaking about the failure of the city to endorse these contracts. I don't put that right.

When you speak of the fact that these contracts were not subjected to the approval of the city, I want to call your attention to the testimony of Mr. Shonts at page 742. He said:

"A. I had suggested, and made an application really to the Public Service Commission that inasmuch as our contract No. 3, which is our present contract with the city — under that contract they had the right of supervision of any contracts for elevated extensions. We had the right for third-tracking. That if they would waive, inasmuch as — this, I think, I wrote in April. We had signed agreement in March. I wanted to do something. I knew we could not do anything to promote the subway, because the initiative all rested there as to plans, specifications and awarding of contracts, in the hands of the Public Service Commission, but so far as third-tracking is concerned, the initiative rested with us, and I wanted to do something if I could to hurry matters, and get some relief in the city. I had suggested if they would waive that contracted right of theirs in regard to the supervision of the contracts so far as related to the elevated extensions, I would recommend to our board the making of a contract with Mr. Stevens, who had been associated with me at Panama, and who I knew to be an able and resourceful and experienced transportation man, upon some reasonable percentage basis, if we could agree on some, to take charge of that work."

"Q. In other words, Mr. Shonts, you had asked the Public Service Commission to allow you, or the company, rather, to take the exclusive and unsupervised direction of the work of elevated extension? A. Yes."

"Q. Although under the terms of the contract with the city there was a reservation in favor of the city of advisory rights, with reference to the rights? A. That is it exactly. My object —"

Omitting a few questions.

"Q. You say you had asked that it should be waived? A. I had written the Public Service Commission a letter, and said if they would waive it I would recommend to our board the making of this sort of an arrangement with Stevens."

I think we have overlooked possibly that testimony of Mr. Shonts and lately have been taking it from the viewpoint of wit-

ness or director that this subway contract might have failed if supervision had been insisted upon.

I do not take the time in Mr. Morgan's examination to expatiate upon that, but I simply call your attention to it in connection with testimony recently given here. It puts an entirely different aspect on the situation.

Mr. Shuster.— I think Mr. McAneny testified to that.

Mr. Quackenbush.— I think there is a misapprehension there that at some later time I will endeavor to correct.

Mr. Moss.— You mean a misapprehension, by whom?

Mr. Quackenbush.— I think by yourself.

Mr. Moss.— I may be wrong, Mr. Quackenbush. I am speaking as the thought comes to me. The application referred to in the testimony just read is the application of the Public Service Commission to waive their right under the Interborough's certificate for the extension. Mr. Shonts in speaking of contract No. 3 indulged in: "Because contract No. 3 refers to the subway," or words to that effect. Does that relate to third-tracking?

Mr. Quackenbush.— That relates to third-tracking plus the building of the elevated extensions in the Bronx.

Senator Thompson.— You are both right.

Mr. Moss.— That doesn't affect my point of view.

Recently it has been suggested that the whole subway contract might have failed if the Public Service Commission hadn't yielded its ordinary right to supervise.

Mr. Quackenbush.— I don't dispute that. I haven't finished. That is just what I thought his misapprehension was, that the suggestion of the subway contract, the whole plan would have failed, relates to transactions that took place prior to the 19th day of March, 1913. This took place in April, 1913. That is right.

Senator Thompson.— Yes.

Mr. Quackenbush.— I prepared that myself.

Senator Thompson.— This testimony.

Mr. Quackenbush.— There isn't a witness here from my office with whom I hadn't talked.

Now, he did not, that is just what I point out to you. The application which he sent to the Public Service Commission, which I prepared, went there in April, 1913, and this is a misapprehension which I say I think exists. Now, I won't take any further time on that except to point it out. I think Mr. Shuster here is inclined to take my view of it.

Mr. Shuster.— That is my recollection of it.

Mr. Moss.— The point that I am calling to your attention, Mr. Morgan, is that if the Stevens' proposition is objectionable, the Gillespie proposition also was objectionable. Mr. Gillespie had some plants, but he was a foundation contractor. He had no plant for steel work. He only did about a million dollars worth of work of the foundation work. He let out the major part of the contract about ten million dollars worth to Terry & Tench, and the other men, Snare & Triest, did about a million dollars worth of work. Terry & Tench were suggested to the direction of Mr. Headly and your people. A. (By Mr. Morgan.) "And your people," what do you mean?

Q. The Interborough people. You are a partner in the financial aspect of the game? A. Purely.

Q. That is what I mean when I say you and Terry & Tench, who carried the burden, did the work, the greater part of the work, and were content with a profit of four to four and a half per cent. Now, there the same kind of objections to the Gillespie contract that there were to the Stevens' contract as proposed. And if you would take an active position of opposition to the Stevens' contract, why didn't you with the Gillespie? A. I didn't take an active position of opposition to the Stevens' contract. I said to Mr. Shonts, as I have testified, that two of his directors had been to see me and said the Stevens' contract was extravagant. Mr. Shonts didn't think it was. He said that himself, and he said so at the time, but he said that nothing shall be done that is wrong and the directors don't approve of. I am satisfied with that. I can't go further than that in the matter.



Q. But, you have never made any inquiry as to what may have been done in the way of comments and obligations of any kind under the Gillespie contract? A. No.

Q. You don't know? A. I have no information on it. None whatever.

Q. You like the directors? A. You say, "Like the directors" there again I can't answer that question. I don't know.

Q. Don't you know? You, as the financial agent for this stupendous financial transaction, don't you know that the directors have trusted to Shonts? A. To a very large extent, of course, they have.

Q. You haven't neglected to assure yourself where the actual directing power of this was? A. No.

Q. Did either Lane or Read say anything to you about the Gillespie contract? A. No, I am sure they did not. I didn't even know who had the contract.

Q. I find on looking over my papers that are attached or connected with that railroad letter of March 10, 1910, Shonts to Wilcox, was a letter addressed to you by Mr. Shonts. It is already in evidence. I will read it to you.

"March 11, 1910.

"Personal and Confidential.

"My Dear Mr. Morgan: I enclose you herewith for your personal information first draft of a letter setting forth results of various conferences with Chairman Wilcox.

"I do not mean to be understood as saying that Chairman Wilcox has agreed to everything contained in the communication, but I believe he does agree with the principles enunciated.

"Will you be good enough to read this draft and give me the benefit of your suggestions you may care to make?

"Very truly yours,

"THEODORE P. SHONTS,

"President."

You did read it? A. I did read it undoubtedly.

Q. Did you make any suggestions? A. I judge not unless they are in the correspondence.

Q. I find no correspondence. A. Then I don't think I did.

Q. But it does appear that Mr. Shonts modified this proposition because the letter in the possession of Travis H. Whitney of the Public Service Commission of the same general character as this bore date of March 20th. I think it was practically March 20th, and it appeared that there had been figuring done by Mr. Shonts with the assistance of Mr. Hedley and others so that there was some slight modification of the proposition as was laid before you confidentially on the 10th of March. Now, didn't you participate on that? A. Very likely. I had Mr. Shonts come in and talked it over.

Q. That is it. A. I don't recall all these various steps.

Q. But this must refresh your recollection to the point that this proposition March 10th, was seriously considered? A. Of course, it was seriously considered.

Q. Between you and Mr. Shonts, upon the basis that you would have to finance, was modified under your suggestions and as it went into that meeting at Willcox's house on March 22nd, was the result of the conferences between you and Shonts, Hedley and those folks, and when it seemed to have been acceptable to the Public Service Commission was put in here and was a sealed, signed and delivered business? A. Well.

Mr. Lindabury.—There isn't anything to indicate is there that the modifications proposed were suggested by Mr. Morgan?

Mr. Moss.—He suggested. You did, did you not? A. They may have been.

Q. And the probabilities are that they were? A. You know how it is when you are discussing a matter. One man may suggest one thing and the other another.

Q. But Mr. Shonts was a man of business and this was a big business proposition and you weren't wasting your time and when you asked questions or he asked you for your opinion, you probably gave it to him, and if the proposition was modified it probably had some of your modifications? A. I should be sorry if it hadn't represented some of my ideas.

Q. I suppose if I were to ask you again, any information that you might have about that meeting of the directors, Executive Committee the next morning, you would answer as before that you had no information, therefore, we won't discuss it. A. All right.

Q. Now, there was another proposition in July, another one in Demeber, 1910. I find in your files, and you have been good enough to give us a photograph of a communication from Mr. Shonts to your Mr. Davison under date of November 30, 1910, which contains what is evidently by comparison a first form of the proposition that was made to the city on December 5. A. Very likely.

Q. Now, this is Mr. Shonts' letter to Mr. Davison:

*November 30, 1910.*

"My Dear Mr. Davison:

"Herewith first draft of proposed letter covering revised proposition to date.

"I wish you would be good enough to read the same and let me have your criticism if convenient, tomorrow, as our mutual friend has indicated that he thinks the time is about right for us to send it in.

"Very truly,"

Now this indicates to your mind I presume, as it does to mine, that your firm was being consulted right along about changes in the proposition and there was some reason why this was addressed to Mr. Davison? A. Again I was away. In the Autumn I am nearly always away until Christmas.

Q. It was submitted to you or to your firm with this suggestion that a mutual friend has indicated that he thinks the time is about right to send it in. Do you know who that mutual friend was? A. It might have been one of twenty people. I don't know.

Q. Have you any idea as to whether it was Mr. Gaynor? A. No, I haven't. I think it was more unlikely to have been Mr. Gaynor than Mr. Willcox or Mr. McAneny or Mr. Seth Low.

Q. The reason I have suggested Mr. Gaynor's name was that according to the report made by Mr. Shonts to the board of directors on the 23rd of March, Mr. Gaynor, the Mayor, had proposed that he would act as arbitrator between your company and the Public Service Commission, and nothing had occurred between March and November to indicate any change in that relation. Now, that is the reason I asked you. It is not a mere idle ques-

tion to bring Mr. Gaynor's name in. I shall have to ask Mr. Davison about it since you don't know. A. Ask him.

Q. But I want to find out from your firm who that mutual friend was because this proposition is addressed to William R. Willcox. A. Yes.

Q. Now, as this proposition is addressed to Mr. Willcox, it could hardly be Mr. Willcox. A. I should think very likely.

Q. Mr. Willcox would be the mutual friend to advise Mr. Shonts to submit a proposition to him and Mr. Willcox? A. All this thing was done with the Public Service Commission's full knowledge and apprehension.

Q. Were you and Mr. Shonts dealing with Mr. Willcox as a mutual friend in these propositions? A. Very often. You don't suppose these propositions were made up by Mr. Shonts and the Interborough and myself.

Q. What right would Mr. Willcox, Chairman of the Public Service Commission have to suggest as a mutual friend that it was about the right time to send it in? A. I don't know he didn't have a right.

Q. Why should it be referred to in a personal letter like this as our mutual friend? A. Mr. Willcox frequently acted as mutual friend?

Q. Between you and the Public Service Commission? A. No, but he was a member of the Public Service Commission all the time.

Q. What right had he to act as a mutual friend? A. I should think he would have every right.

Q. If that is your view of it let it go. A. Yes, sir.

Q. Do you think it was Mr. Willcox? A. I don't know. I haven't the slightest idea.

Q. And the thoughts of the important men that have had to deal with these things, what they thought at the time, what they remember now were their thoughts at the time, are the facts after all, out of which deductions will have to be made.

Now here I have a letter of July 26, 1911, when the situation was very much more mixed. A. Very mixed.

Q. That is just about the time of the "Flops" I was mentioning when Mr. Gaynor and Mr. Prendergast "Flopped."

July 26, 1911, this is so close that it might be the night before or the night after. But here is the letter written by you to Mr. Shonts:

"I enclose a cutting from the "Evening Post," of night before last and one from yesterday's "Sun," in which I admit there is nothing, but I feel so sure that it would be wiser for your company not to appear to be subway hunting for a little while that I simply send these cutting to you to show you the sort of thing that is appearing.

"Your decision in the matter will be quite satisfactory.

"Yours very sincerely,

"J. P. MORGAN, JR."

"T. P. Shonts, Esquire, President."

A. Yes, well.

Q. I haven't asked you the question yet, but I see it is sinking in. Now you kind of hesitated a little bit when I spoke of you, referring to you as "Your company, etc.," but you were pretty closely tied into this company's interests at this time. A. Very closely, indeed.

Q. You were really part of them. You haven't given them any money. A. We intended to. We were bound to if they put in a proposition that was workable.

Q. Why did you think it would be wiser not to appear to be subway hunting? A. You will have to get the cuttings.

Q. That you didn't furnish we mith. The clippings weren't enclosed. A. The clippings weren't among the papers either.

Mr. Lindabury.— Those clippings went to Mr. Shonts.

Mr. Morgan.— Yes, they were sent to Mr. Shonts.

Q. You see how interesting this was, Mr. Pepperman writing to you at once. July 26, the very same day.

*July, 26, 1911.*

"My Dear Mr. Morgan:

"I have your letter of even date enclosing cuttings from Monday's "Evening Post" and yesterday's "Sun" respectively.

"Mr. Shonts' parting instructions to be unequivocally followed were exactly as set forth in your letter. I have, therefore, talked with the writer of the "Evening Post" story, who is personally known to me, who states to me that he got his cue from the mayor's statement a few days ago to the effect that it is possible the Interborough might operate all the subways in Manhattan and the Bronx. He said that the balance of his story was based on his own familiarity with the situation, gained by him as the subway writer for the "Post" during the subway controversy, and that he "Faked" his authority for the statements, feeling them to be facts.

"The main object of this letter, however, is to convey to you the information that Mr. Shonts' instructions to us in this matter are as above set forth, and we shall use our best efforts to see that those instructions are carried out.

"Very truly yours,

"Assistant to President."

"J. P. Morgan, Jr., Esq.,

"Broad and Wall Sts., New York City.

"P. S.—Mr. Shonts is on vacation. Your letter will be presented to him however."

That shows that your heads were very close together July 26, 1911. (Very much laughter.)

Now, that didn't surprise you that the Mayor had a few days before told the "Post" man that he thought the Interborough would be coming in? A. I presume not.

Q. Don't you think then that the thing very likely was that Mr. Gaynor was the mutual friend that you had mentioned back in November, 1910? A. I don't know. There is no need in my guessing at the mutual friend.

Q. Before the Interborough's proposition was made the "Evening Post" man put some truth and a little coloring in an article which he tells Pepperman, who tells you, that it was based upon a statement made by the Mayor to the effect that the Interborough might operate all the subways in Manhattan and the Bronx. A. As I say, I don't know who the mutual friend was and there is no good of my sitting here guessing at him.

Q. I want to make your answer final. You know to give you everything that leads me to the proposition and you might remember something that you previously had forgotten. I find sometimes, Mr. Morgan, that when I ask a question the question that I ask makes me think of something I had forgotten myself.

A. I didn't think you ever forgot anything, Mr. Moss.

Q. It gives me reason for a new question sometimes.

Mr. Lindabury.—It is the first principle in bargaining.

Mr. Moss.—It may be another principle in bargaining that you shouldn't force the situation and make your mutual friend show his hand. You shouldn't seem as though you were getting what your mutual friend was trying to deliver to you. I didn't mean to say that but you make me say it.

Mr. Lindabury.—You can make that statement if you want to.

Mr. Moss.—Perhaps not, if you had all the evidence that has come in here and all the circumstances around it, it might set you thinking too.

Mr. Morgan.—I would like to just make a point there, Mr. Moss. I think that that statement, as you made it there, if I left it unnoticed would mean to everybody in the room that I was trying to arrange to get that, that I knew something more about Mayor Gaynor than I have said. I knew nothing more about Mayor Gaynor except that we were dealing with the city authorities as a whole for which basis or system with the subway.

Q. But we have reached this point that by this time indeed, November, 1910, you and the Interborough were moving pretty closely together. A. We were very close together. I have always said that.

Senator Thompson.—I would like to tell you a little history before this Committee for the purpose of seeing our point of view or Mr. Moss' point of view. Mr. Shonts comes on the stand and he is shown for Mr. Towner for five thousand dollars and from the testimony that day he didn't remember Mr. Towner very well at all, in fact asked questions about his identity. And as he kept coming back day after day his recollection grew about Towner and

it turned out that Towner took him down to a place on Long Island called Saint James to meet Mr. Gaynor to introduce him to Mr. Gaynor and they had some wine there that day.

Mr. Moss.—Towner complained he didn't have any.

Senator Thompson.—Towner came on the stand and he didn't remember it very well the first time and then he came back another day and then he remembered the whole thing in detail and sat here and told us the nicest story even to the coloring of the sky on the afternoon when he and Mr. Gaynor stood on the big bridge between here and Brooklyn and talked about the amount of money that Mr. Towner ought to receive from the Interborough Railroad Company for the service that he had performed and went way into detail regarding it and that is what gets the state of mind of Mr. Moss. Because he finds that folks kind of don't remember, you know.

Mr. Shonts, you know, must have known Mr. Towner pretty well because Towner knew him so well that he advised him of the kind of booze that Mr. Gaynor liked to drink.

Mr. Moss.—Towns said the Mayor told him he ought to charge seven hundred fifty thousand dollars.

Senator Thompson.—We don't care anything about the details at all. We want to know. A. (By Mr. Morgan.) If you want to know, I know of nothing improper that was done in this transaction, from the beginning to the end.

Senator Thompson.—Don't understand me. I am not here to find out something improper. I just want to find out what it is and if it is proper, I am a good deal more interested than if it isn't. A. I am glad to hear it.

Q. (By Mr. Moss.) I told you when I gave you the date of this letter about the "Post" clipping, July 26, I thought it was around the time of the "Flop." This is a letter which lets me date the "Flop" written by the Mayor and is his own original letter with all his personal interpolations of handwriting. Yesterday, Mr. Bullock of the Brooklyn Rapid Transit testified that at this time he was on the Times and that this letter was put out by the Mayor



at about midnight of July the 19th, in anticipation of Mr. Prendergast taking the same position at the meeting to follow on the next day. So the testimony of Mr. Bullock with this letter fixes the time when the Mayor joined Mr. Prendergast in voting against the Interborough as July 20th. A. Yes, this was July 30th here.

Q. That is July 26th.

Wait a minute, let's get the connection of things.

This letter has been read before, but I think you said you hadn't seen or heard of it and I want to give you two or three sentences of it because they point to the question I am going to ask you.

*July 19, 1911.*

"To the People of New York City:

"I regret exceedingly to see this thing being done. It is needless, it is wrong and a humiliation to this city. It was not in sight a few months ago.

"The city is being over-reached by a few financiers of great ability. They have actually induced city officials to agree to subsidize the companies to equip and operate—"

He goes along and argues his new position, for this is an absolute reversal, and discusses the surface railroad troubles, brings the Interborough in with it, calls the Interborough by name and discusses the propositions that the Interborough was making and says in winding up:

"I have too long written and spoken against such damnable rascalities to now turn about and ally myself as Mayor of this great and intelligent city, with them. I shall go out of office without putting that stain on my name."

This letter came from the files at the City Hall. Now, that is July 19, 1911, the strongest denunciation that Mayor Gaynor ever made of these railroad conditions that he had attacked in 1909, and he made it very personal as to the Interborough. But here less than a week afterwards is this letter of Mr. Pepperman where you have objected to the Interborough subway hunting, in which he says he has just had a conversation with the reporter of the "Post" who said, and I will quote it again.

“ I have, therefore, talked with the writer of the ‘ Evening Post ’ story, who is personally known to me, who states to me that he got his cue from the mayor’s statement a few days ago to the effect that it is possible the Interborough might operate all the subways in Manhattan and the Bronx.”

It is needless to say that the Mayor did not stand on his “ Flop ” but afterwards supported the contracts. He and Prendergast “ Flopped ” one way and “ Flopped ” back again. Now you have answered probably in advance of my question what my question would be directed to.

That is, your knowledge of your information as to what methods were used by Mr. Shonts or any other persons connected with the Interborough Company to induce these reversals of position by the officials of this city? A. Yes, I have answered that before.

Q. Yes, you have answered that, but you answered it in advance of my question and, therefore, if I hadn’t made my question the import of it would not be here. Now you make your answer apply to my question? A. I make my answer apply to your question.

Q. We are thinking about events in this important year, 1911, in the middle of 1911.

Senator Thompson.— If this question is provincial why you overlook it.

Do you have so many deals of this kind that they pass out of your mind? A. No, but I have a great many and the details of conversations on a thing that finally takes shape, I don’t remember. I don’t try to remember. I know perfectly well that nothing improper has been done during the thing and I forget the details.

Senator Thompson.— I am going to tell you of my opinion about that regardless as to whether anything improper was done. I don’t think you knew it, but lots of times they put things over us folks. A. Nobody is safe from that. We had a robbery in our office the other day. (Laughter.)

Senator Thompson.— And is that where the police wire-tapped

for you? A. That is another one. We haven't found that man yet. We knew these two miserable little boys though.

Senator Thompson.— So that there might be something in the conversation, don't you see, Mr. Morgan, there might be something that you had. A. I think I should have seen any suggestion of impropriety.

Senator Thompson.— Is there anything that you can give us? A. I shall be glad to remember it if I can.

Senator Thompson.— It was a sort of visiting proposition between you and Mr. Shonts. A. Day after day and year after year.

Q. It moulded along? A. That describes it exactly.

Q. By Mr. Moss.) But speaking of those telegrams, do you think that copies of anybody else's telegrams got into your office? A. Certainly not.

Q. Without your knowledge? A. Well, I was not responsible if it was, without my knowledge.

Q. I didn't say you were.

Now there was a meeting of the board of directors held November 29, 1911. That is the board of directors of the Interborough.

A. Held on what date?

Q. November 29, 1911. I read as follows:

“ The President laid before the Board a claim of Messrs. J. P. Morgan & Company for services as bankers during the past few years in connection with the negotiations of the Interborough Rapid Transit Company with the authorities of the City of New York on the subway and elevated extensions and improvements, and also a claim of Messrs. J. P. Morgan & Company on behalf of themselves and their syndicate associates, for commitments, for money approximating thirty million dollars, to cover elevated extensions and improvements, and \$7,500 to cover subway extensions and improvements. In order to enable the Interborough Rapid Transit Company to effect a contract with the City authorities. The President further stated that as a result of conferences with Messrs. J. P. Morgan & Company, they had agreed to accept

\$250,000 to cover their personal services, and \$250,000 to cover the services and commitments of their syndicate associates, the latter sum, however, to be deducted from any commissions which the syndicate associates might become entitled to if an agreement should be entered into with the City for the construction of subway extensions or elevated extensions prior to March 1st, 1912, all terms of such advances to be the subject of future agreement between the Interborough Rapid Transit Company, and Messrs. J. P. Morgan & Company. Whereupon," the minutes continue, "upon consideration, it was duly resolved that the claim of Messrs. J. P. Morgan & Company for personal services be adjusted at the sum of \$250,000, to be paid Messrs. J. P. Morgan & Company personally; and that the claim of Messrs. Morgan & Comptny, on behalf of their financial associates, for financial commitments, be adjusted at the further sum of \$250,000, to be paid them on account of their syndicate associates, the latter sum, however, to be credited upon any commissions or profits that may go to the syndicate associates for further services or commitments in event an agreement should be entered into between the Interborough Company and the City of New York for the construction of elevated or subway extensions and improvements, prior to March 1st, 1912, all terms of such advances to be the subject of future agreement between the Interborough Rapid Transit and Messrs. J. P. Morgan & Company, and that vouchers of the company be made out and delivered to Messrs. J. P. Morgan & Company in conformity with this resolution."

We will find the vouchers, Mr. Chairman, on 331 and 332. Those vouchers indicate, of course, it is a fact the money was paid. A. The money was paid.

Q. At that time, November 11, 1910, you hadn't advanced any money at all? A. No.

Q. And you didn't know that the company was going to make a deal? A. We understood that it was all off.

Q. All off? A. As I understood, and we drew the line under the thing as it stood and any further arrangements should be the subject of negotiations.

Q. What had you done for that five hundred thousand dollars?

A. Do you want to take it in two divisions?

Q. Take it any way you like.

Senator Thompson.— That means you can divide it into four if you want to. A. Two hundred fifty thousand dollars which was for holding the money in readiness. We had given the Interborough the right for practically over two years and had agreed to provide them with the necessary money that they wanted. We had to make our arrangements accordingly. We had arranged and provided for that amount of money as they needed it, if they needed it. In fact, we gave them a right to one hundred and five million dollars. It started at fifteen or twenty millions and kept increasing in size and when the negotiations were finally off the friends who were with us in the matter should be compensated for that kind of work in their business and we fixed the sum at a very moderate one because two hundred fifty thousand dollars is only a very small percentage of a hundred million dollars. I have never seen anybody before who was able to get the call of a hundred million dollars for a quarter per cent., especially over a long period of time. That is my answer for that two hundred fifty thousand dollars.

In regard to the other, the transaction seemed to us to be a very different one from our usual kind of business. Ordinarily we sit there in the office and a company comes to us with the suggestion that they have arranged certain kinds of securities. They have arranged a bond or they are going to arrange a bond to do a certain piece of work for them. They want more capital. They suggest that the securities shall be issued. We to buy it. We look into the security. We look into the history of the company and we say, "Yes," or "No." If we buy it, we make a profit on it or, as in the case of other companies, we sell it on commission. We charge a regular commission for doing that but that was a totally different kind of transaction. The company came to us in the beginning and said, "We are going probably to issue a great deal more capital, but we want you to be with it all the time, all through the whole inception and the whole development of the negotiations, so that you are working for us in watching that we

don't get ourselves into a position where you can't finance us." For that we felt that we were working for the company.

Q. The company knew it was going to get the job? A. Indeed it didn't.

Q. If it was obligating itself to you to get the money? A. It was going to make this proposition to the public bodies.

Senator Thompson.—I think my opinion of this after what I have been through, is that the company, that is as Mr. Shonts' mind represented the company, wanted to know when he went into the negotiations, he wanted to go in with money rather than to be going in with an expectation that he could get money. In other words he wanted to have himself sure of his money. A. That is the way it is.

Senator Thompson.—That is the way that thing has impressed me on the record here. Mr. Shonts went to this situation so that when he made a proposition he was always backed up with the money to come across with. That is the way the testimony is. A. That is so, too.

Q. (By Mr. Moss.) Did you hold a lot of money? Did you actually have a lot of money on deposit somewhere? A. We always have a lot of money on deposit, sir.

Q. Did you segregate any money for it? A. No, if we had done that we would have had to charge a great deal more.

Q. Your funds were no different. That is, the funds in your office were no different from what they had been on account of this Interborough proposition, were they? A. I can't, Mr. Moss. I am not going to take the balance sheet of our firm and show you. Our position was this: we had to handle our business in such a way that we could produce that money at any time we wanted, additional to what we ordinarily thought we had to produce.

Q. Have you ever figured out the statement to show how much interest you lost because you had agreed to finance the Interborough? A. No, sir.

Q. Had you ever figured out a statement to show what annoyances or difficulties, in a financial way, you suffered because you had agreed to finance this deal? A. No, sir.

Q. Have you ever made out a statement of any deals that you were prevented from carrying through because you had an obligation here? A. Certainly.

Q. You are not able to state any deals that you were prevented from going into? A. No.

Q. You are not able to state any practical disadvantage that you suffered? A. No, sir.

Q. But for taking the chance of putting your word behind an agreement to furnish money, you capitalized that risk that you took at this figure? A. Yes.

Q. If they hadn't gotten the jab, do you think you would have sent them the bill? A. They hadn't gotten the job then, and the thing was off.

Q. Now, here is one voucher No. 97,767, two hundred fifty thousand dollars, dated November 29, 1911. That is the same day as the resolution. Two hundred fifty thousand dollars to cover commitments to Messrs. J. P. Morgan & Company and to their syndicate associates for money approximately thirty million dollars for the elevated extensions and improvements and thirty-five million to cover extensions and improvements, to be credited upon any addition of profits that may go to Morgan & Company for further service and commitments. A. Before a certain date.

Senator Thompson.—The date was April 1, 1912. A. March I think.

Q. (By Mr. Moss.) And the second voucher, No. 97,768, two hundred fifty thousand dollars for services as bankers during the past two years in connection with the negotiations of the Interborough Rapid Transit Company with the city of New York for subway and elevated extensions and improvements. Now, that voucher for two hundred fifty thousand dollars is for services as bankers for two years. That is November, 1909, to November, 1911, for services in connection with the negotiations of the Interborough Rapid Transit Company and the city of New York. Now, will you please state what services you rendered? A. I have told you. We saw Mr. Shonts in an advisory way and talked over the whole thing over and over again and were always at his disposal, always enabling him to keep so that he could, in making his proposition to the city, feel that he had the money behind him.

Q. A little while ago you suggested that all of the negotiations between you and Mr. Shonts were indicated by letters and we have those letters all in evidence. Of course, I don't suppose that means to cut out conversations in connection with those letters, but that the substance of those services will be found in the terms of those letters? A. I don't think so. I think you misunderstood that.

Q. I would be glad glad to have you make it as broad as you like. A. Our negotiations with Mr. Shonts were practically daily. He was to come in and talk things over on the different aspects of conditions.

Q. Why then, he must have told you all about seeing the mayor at the City Hall. A. I don't know whether he did or not.

Q. He must have told you about the mayor agreeing to be arbitrator. A. I don't know.

Q. He must have told you about seeing the mayor down at Saint James? A. Certainly because you have got a letter about that.

Q. He must have told you about Towner. A. I don't think he did that.

Q. Why didn't he do that? He was telling you everything. A. I don't happen to remember it.

Senator Thompson.—That is the way Mr. Shonts was. He didn't remember.

Q. He must have told you how he overcame the objections of the mayor and Mr. Prendergast. When did he tell you? A. I don't know..

Q. Well, what services did you render then? Do you mean to say that you charged two hundred fifty thousand dollars for just talking to Mr. Shonts? A. Yes, sir, and well worth it, too.

Q. Evidently it was. Evidently you told Mr. Shonts how to do something. A. I told Mr. Shonts how to do this, as I have said before. I told him when he had shaped these propositions or how he had shaped them, and advised with him about shaping them so that he could go to the authorities of the city of New York and tell them that he could produce this money.

Q. Well, he knew that all the time. He had your word for that back of the first letter in 1909. A. Not if he got the thing wrong. That was going to cost him too much money. They



couldn't afford to do it. At any rate, that is all I have to say about the services, Mr. Moss. The company appreciated them and we rendered our account about them.

Q. How much did you charge him for writing not to go subway hunting? A. Mr. Moss, I will not stand this kind of talk. I want to tell you I did not come here to be insulted. You are getting the thing all the time on the idea that I was producing some sort or getting up some sort of a plan for doing the city.

Q. Now, Mr. Morgan, you stop insulting me. If you take that for an insult, I have the same right to take your insinuations as an insult. I am asking your honorable questions.

Senator Thompson.—This gets just like a Brooklyn Rapid Transit argument and we don't want it. A. (By Mr. Morgan.) And I don't want it.

Mr. Moss.—Don't you characterize my questions Mr. Morgan, or I will take it as an insult, too. I am a little fellow in New York, but I am awful proud. A. So am I.

Senator Thompson.—We haven't any indictment against Mr. Morgan or any complaint and we don't intend to proceed along that line. But Mr. Lane did make a very serious accusation, if the memorandum we have in evidence is his. Now, we have a right to go into it or else we wouldn't be worthy to be a Committee of Investigation. If you kept items of these charges, why, I think they ought to be furnished. A. We didn't keep items of these charges.

Senator Thompson.—That is all there is to that probably. Did you make any book of it at all? A. None at all.

Senator Thompson.—Just thought of it and put down two hundred fifty thousand dollars for that? A. I judge it was discussed with Mr. Shonts and Mr. Shonts put it up to his board and his board approved and agreed and we have no accounting in the matter. We have no book.

I didn't mean to insult you, sir.

Mr. Moss.—Nor did I mean to insult you, Mr. Morgan.

I think Mr. Morgan and I will agree that if he understands

that I am attending to business as he is it is right. A. I didn't think that last question sounded like attending to business.

Q. The trouble, Mr. Morgan, is that you don't often get under a real examination, you know, and you don't know how it feels. I have been cross-examined and I know how it feels. A. I hope you are examined more than I am.

Q. I want you to see just how my mind is operating. I am trying to find out how yours is. I asked you a whole lot of questions this morning designed to bring out the conversations between you and Mr. Shonts about the details, and it was practically that there weren't any or that they weren't of any importance to be remembered or such things as that.

Now, we came down to discuss this bill of two hundred fifty thousand dollars for services and for the first time, it seemed to me, for the first time you spoke of daily conferences about every phase of this business and that leads me back, necessarily, to the question which we didn't get very far on. What did Mr. Shonts tell you in these conversations for which you charged him two hundred fifty thousand? What did he tell you about the methods he had used to overcome the resistance of the mayor and the controller? A. So far as I know, he told me nothing about any methods.

Q. What advice did you give him on that most important of all questions, how to overcome the objection of the mayor and the controller and the president of the board of Aldermen? A. I couldn't have given him but the advice to show them figures and convince them if he could.

Q. Anybody could do that. A. Well.

Q. There is nothing in that that is worth two hundred fifty thousand dollars, is there? A. Mr. Moss, I —

Q. I really think, Mr. Morgan, if you get down to this proposition as you would to a big financial proposition and run your mind along it that you might dig out something that you haven't remembered about, a discussion on that most important matter. Now, you were bound in this thing. You are bound in it by the interests that you were serving, by the fee that you were earning, by the continued relation that was going on. You are bound in it not simply as a banker, who might furnish money, but as a man

who was taking an active interest in every phase of the matter and were desirous to see it put over.

Now, it strikes me that the one thing that was preventing its being put over, was the absence of votes. And that absence of votes was made most prominent by the fact that the men who refused to give the votes were standing on their pre-election promises and they would have to vote in the face of the electorate which they had promised certain things before election.

I can't imagine anything which you and Mr. Shonts would be more likely to talk of from my modest standpoint than the meeting of that obstacle. A. I think that was a side of it which we discussed hardly at all.

Q. I can not see in anything that you have said the basis for a charge of two hundred fifty thousand dollars for services. Your charge, two hundred fifty thousand dollars for having money on tap, maybe that was reasonable, but I don't find any basis whatever for a charge of two hundred fifty thousand dollars for services. Maybe I haven't understood your testimony, but I don't find it. A. I can't help it.

Q. Now, you knew if you had the bonds to sell there would be a profit there too, didn't you? A. At this time the thing was off.

Q. I know it. But you never paid back this two hundred fifty thousand dollars or any part of it and never gave them credit for it, and you went on and made the bond profit and the interest profit just the same as though that two hundred fifty thousand dollars had not been paid. A. That was for "Service during the past two years."

Q. That was done, but in addition to that two hundred fifty thousand dollars, you did make a tidy sum by interest on balances, didn't you? A. During that time? I don't know.

Q. When you handled the bonds? A. Oh, when we handled the bonds, certainly.

Q. I find in the record in the former time, Mr. Chairman, the statement of balances up to February, 1916, and I request Mr. Morgan to give us the balances month by month. A. (By Mr. Morgan.) We have got them there.

Q. Just so as to complete the record. A. This is the sheet:

Statement of Interborough Rapid Transit Balances for first of each month, 1916.

	Rate of interest allowed	per annum Jan. 1, 1916	Feb. 1, 1916
Rapid Transit Subway Construction Company . . . . .	2%	3,815.44	174,566.86
Interborough Rapid Transit Company . . . . .	2%	120,160.44	472,092.15
(General Account.)			
Interborough Rapid Subway Contribution . . . . .	2½%	31,959,299.84	44,365,914.51
Interborough Rapid Special Account . . . . .	2½%	1,149.41	52,083.33
Interborough Rapid Elevated Extension . . . . .	2½%	1,902,341.35	2,211,918.00
Interborough Rapid Manhattan Power House . . . . .	2½%	16,386.17	98,825.91
Interborough Rapid Manhattan Third-Tracking . . . . .	2½%	87,641.02	91,994.52
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		March 1, 1916	April 1, 1916
Rapid Transit Subway Construction Company . . . . .		8,653.00	73,879.73
Interborough Rapid Transit Company (General Account). . . . .		212,783.18	2,783.18
Interborough Rapid Subway Contribution . . . . .		42,867,458.36	41,613,166.68
Interborough Rapid Special Account . . . . .		75,000.00	75,000.00
Interborough Rapid Elevated Extension . . . . .		6,579,268.78	6,430,245.82
Interborough Rapid Manhattan Power House . . . . .		90,627.38	20,178.09
Interborough Rapid Third-Tracking . . . . .		79,820.31	61,944.25

	May 1, 1916	June 1, 1916
Rapid Transit Subway Construction Company . . . . .	3,963.61	96,983.31
Interborough Rapid Transit Company (General Account) . . . . .	2,783.18	2,783.18
Interborough Rapid Subway Contribution . . . . .	40,844,993.14	39,647,746.86
Interborough Rapid Special Account . . . . .	75,000.00	75,000.00
Interborough Rapid Elevated Extension . . . . .	6,298,778.85	6,218,972.26
Interborough Rapid Manhattan Power House . . . . .	18,522.00	43,376.65
Interborough Rapid Manhattan Third-Tracking . . . . .	129,980.33	85,752.94

June 15th, 1916.

Q. (By Mr. Moss.) The profit that you would make by the interest would be the difference. Well, we have already got the basis of that.

Now, before we leave this original payment, two hundred fifty thousand dollars was taken by you for yourself and syndicate associates, was that divided between you and some other persons?

A. Yes, two institutions in the city.

Q. We are speaking of the first one. A. The one that stated to be divided was divided.

Q. The two hundred fifty thousand dollars mentioned second was retained by your firm, was it not? A. For services?

Q. For services. A. Yes.

Q. And you had a participation in the other one? A. We had a participation in the other one.

Q. Do you mind telling what proportion it was? A. I think it was one-half, but I am not certain. That was a matter of information between ourselves and our friends.

Q. I want to ask you a question, you mustn't get angry at Mr. Morgan, because I am going to make this record complete. I want to ask you if that two hundred fifty thousand dollars with what you got out of the half of the other two hundred fifty thousand dol-

lars, was retained by you or your firm entirely for yourselves or was any portion of it paid to anyone else in connection with this business? A. It was all retained by ourselves.

Q. I am not going to pursue that because my question is broad and I assume that you have answered it fully. A. I have answered it fully.

Senator Thompson.—You need not hesitate about asking those questions as it wouldn't be just to Mr. Morgan to leave questions of that kind unasked because Mr. Morgan is a prominent citizen.

Q. Now the services of these associates of yours, relating now to the first two hundred fifty thousand dollars, I assume that so far as you know they had not done any more than you did. A. I presume they did just as we did.

Q. Of holding funds? A. Yes, as we did.

Q. These bonds were paid for by you and your associates at ninety-three and a half, all of them? A. Ninety-three and a half.

Q. What were they sold for? A. We made a syndicate at ninety-six. They were all sold to the syndicate except those we sold to insurance companies at ninety-six.

Q. How much did you sell outside of the syndicate? A. At ninety-six, we didn't sell any outside of the syndicate except the insurance company ones.

Q. How much was that? A. Twelve millions.

Q. Was that sold at ninety-six? A. Yes.

Q. Was that the Equitable? A. That was the Equitable, The Mutual and The Metropolitan.

Senator Thompson.—What is a syndicate for? A. A syndicate was to buy the bonds and for us to sell them for their account.

Senator Thompson.—Is that made up of an association of corporations? A. No, it is made up of individuals, companies and bankers and banks and anything else.

Senator Thompson.—Who comprised the syndicate? A. The original syndicate, we and two others, the First National Bank and the National City Bank.

(By Mr. Moss.) These bonds that you sold to the insurance company, did they participate with you in the profit? You bought at ninety-three and a half and sold them at ninety-six. A. I sold them to the insurance companies at ninety-six.

Q. Was it you or the insurance companies that sold to the syndicate? A. We sold them.

Q. You sold. You got the profit? A. Certainly.

Senator Thompson.— You made the difference between ninety-three and a half and ninety-six on all of them? A. On all of them.

Senator Thompson.— Then the syndicate's profits come in after the ninety-six? A. Yes.

Senator Thompson.— Have those bonds all been sold by the syndicate? A. Not all, no.

Senator Thompson.— At what prices have they been sold? A. You have the statement about that. I haven't got that in my mind.

Mr. Moss.— Mr. Morse is that here?

Here is a copy. (From Mr. Lindabury.)

Senator Thompson.— Did you participate in the financing of the Brooklyn Rapid Transit? A. No.

Mr. Moss.— Well, I find by the explanation of Mr. Lindabury that there are two or three exchanges at ninety-six.

Mr. Lindabury.— More than two or three. Those are the exchanges for the old bonds.

Mr. Moss.— Several exchanges at ninety-six.

Mr. Morgan.— That is a detail of working out the syndicate.

Mr. Moss.— Well, suppose we reserve Mr. Keys to testify as to which of these are sales and which of these are exchanges.

Mr. Lindabury.— We can do that very easily by permitting him to have the statement.

Mr. Keys' statement is that on the statement furnished Mr.

Morse, of the syndicate sales, all that are set down at ninety-six and interest less than one quarter of one per cent. or at ninety-eight were exchange transactions, and twelve millions at ninety-six were assigned to insurance companies. They appear under different dates but total up at twelve millions and they are all that are set down here at ninety-six.

All the others were sales to other parties.

(Copy of Statements Follow.)

### SCHEDULE 1.

*Interborough Rapid Transit Company: Amounts Paid to Company for Purchase of Bonds Under Contract of April 9, 1912, and Supplements.*

1913	PAR VALUE		PRINCIPAL	INTEREST
April 21	16,043,000.00	at .931½		
		& int.	\$15,000,205.00	245,101.39
April 21	16,043,000.00	at .931½		
		& int.	15,000,205.00	245,101.39
June 11	2,245,988.00	at .931½		
		& int.	2,099,998.78	49,910.84
June 30	2,695,188.00	at .931½		
		& int.	2,520,000.78	67,005.37
Augt. 19	1,122,994.00	at .931½		
		& int.	1,049,999.39	7,486.63
Sept. 10	1,500,000.00	at .931½		
		& int.	1,402,500.00	14,375.00
Oct. 3	29,007,830.00	at .931½		
		& int.	27,122,321.05	370,655.60
1914				
Feby. 18	10,000,000.00	at .931½		
		& int.	9,350,000.00	65,277.70
Feby. 25	5,000,000.00	at .931½		
		& int.	4,675,000.00	37,500.00
Mar. 27	6,390,000.00	at .931½		
		& int.	5,974,650.00	76,325.00
April 8	3,610,000.00	at .931½		
		& int.	3,375,350.00	48,634.72



# 1196 INVESTIGATION OF PUBLIC SERVICE COMMISSIONS

June 12	5,000,000.00	at .931½		
		& int.	4,675,000.00	111,805.56
1915				
June 11	5,000,000.00	at .931½		
		& int.	4,675,000.00	111,111.11
Augt. 16	5,000,000.00	at .931½		
		& int.	4,675,000.00	31,250.00
Decr. 1	20,000,000.00	at .931½		
		& int.	18,700,000.00	416,666.67
1916				
Jan. 26	15,000,000.00	at .931½		
		& int.	14,025,000.00	52,083.33
Feby. 4	5,000,000.00	at .931½		
		& int.	4,675,000.00	22,916.67
			<hr/>	<hr/>
			\$148,658,000.00	\$138,995,230.00 \$1,973,207.06

Total principal and interest..... \$140,968,437.06  
The original obligation of the Syndicate was to  
take . . . . . \$170,000,000.00 Bonds

This amount was reduced by letter December 31st, 1913 (of  
which the Committee already has a copy), to \$160,658,000.00.

Amount purchased from Company to date, \$148,658,000.00.

Balance to be taken from the Company at .931½ and accrued  
interest, \$12,000,000.00.

May 6th, 1916.

1913.	PAR VALUE.	PRICE.	AMOUNT.
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## SCHEDULE 2.

*Interborough Rapid Transit Company, First and Refunding Mortgage 5% Bonds Syndicate, J. P. Morgan & Co., Managers.*

### STATEMENT OF SALES.

1913.	PAR VALUE.	PRICE.	AMOUNT.
April 21.	\$3,600,000	at .96 & int.	\$3,511,000.00
May 5.	2,000,000	at .96 & int.	1,954,444.44
May 29.	2,000,000	at .98 & int., less ¼%	1,996,111.11

1913.	PAR VALUE.	PRICE.	AMOUNT.
June 3.	25,000 at .98 & int., less $\frac{1}{4}\%$		24,965.28
June 4.	26,000 at .98 & int., less $\frac{1}{4}\%$		25,967.50
June 5.	4,000 at .98 & int.		4,005.56
June 5.	41,000 at .98 & int., less $\frac{1}{4}\%$		40,954.45
June 6.	74,000 at .98 & int., less $\frac{1}{4}\%$		73,928.08
June 9.	264,000 at .98 & int., less $\frac{1}{4}\%$		263,853.34
June 10.	240,000 at .98 & int., less $\frac{1}{4}\%$		239,900.00
June 11.	212,000 at .98 & int., less $\frac{1}{4}\%$		211,941.11
June 11.	57,000 at .98 & int.		57,126.66
June 12.	36,000 at .98 & int., less $\frac{1}{4}\%$		35,994.99
June 12.	33,000 at .98 & int.		33,077.92
June 13.	55,000 at .98 & int., less $\frac{1}{4}\%$		55,000.00
June 13.	13,000 at .98 & int.		133,332.50
June 14.	4,000 at .98 & int.		4,010.56
June 14.	33,000 at .98 & int., less $\frac{1}{4}\%$		33,004.59
June 16.	56,000 at .98 & int., less $\frac{1}{4}\%$		56,023.34
June 17.	121,000 at .98 & int., less $\frac{1}{4}\%$		121,067.21
June 17.	8,000 at .98 & int.		8,024.45
June 18.	14,000 at .98 & int., less $\frac{1}{4}\%$		14,009.74
June 18.	33,000 at .98 & int.		33,105.41
June 19.	158,000 at .98 & int., less $\frac{1}{4}\%$		158,131.67
June 19.	8,000 at .98 & int.		8,026.67
June 20.	32,000 at .98 & int., less $\frac{1}{4}\%$		32,031.10
June 21.	18,000 at .98 & int. less $\frac{1}{4}\%$		18,020.01
June 21.	85,000 at .98 & int.		85,306.95
June 23.	15,000 at .98 & int., less $\frac{1}{4}\%$		15,020.85
June 24.	35,000 at .98 & int., less $\frac{1}{4}\%$		35,048.61
June 24.	30,000 at .98 & int., less $\frac{1}{4}\%$		30,045.84
June 24.	33,000 at .98 & int.		33,132.92
June 25.	10,000 at .98 & int.		10,041.67
June 25.	16,000 at .98 & int., less $\frac{1}{4}\%$		16,026.69
June 26.	8,000 at .98 & int., less $\frac{1}{4}\%$		8,014.44
June 27.	17,000 at .98 & int., less $\frac{1}{4}\%$		17,033.06
June 27.	500,000 at .98 & int.		502,222.22
June 28.	3,000 at .98 & int., less $\frac{1}{4}\%$		3,006.25
June 30.	17,000 at .98 & int., less $\frac{1}{4}\%$		17,040.14
July 1.	4,000 at .98 & int., less $\frac{1}{4}\%$		3,910.00

## 1198 INVESTIGATION OF PUBLIC SERVICE COMMISSIONS

1913.	PAR VALUE.	PRICE.	AMOUNT.
July 2.	40,000 at .98 & int., less $\frac{1}{4}\%$		39,205.56
July 2.	27,000 at .98 & int., less $\frac{1}{4}\%$		26,396.25
July 3.	17,000 at .98 & int., less $\frac{1}{4}\%$		16,622.23
July 3.	132,000 at .98 & int.		129,396.67
July 7.	44,000 at .98 & int.		43,156.67
July 7.	4,000 at .98 & int., less $\frac{1}{4}\%$		3,913.34
July 8.	7,000 at .98 & int., less $\frac{1}{4}\%$		6,849.31
July 9.	12,000 at .98 & int., less $\frac{1}{4}\%$		11,743.33
July 9.	5,000 at .98 & int.		4,905.56
July 10.	5,000 at .98 & int., less $\frac{1}{4}\%$		4,893.75
July 11.	8,000 at .98 & int., less $\frac{1}{4}\%$		7,831.12
July 12.	2,000 at .98 & int., less $\frac{1}{4}\%$		1,958.05
July 14.	265,000 at .98 & int., less $\frac{1}{4}\%$		260,178.48
July 14.	55,000 at .98 & int.		53,861.80
July 15.	4,000 at .98 & int.		3,917.78
July 15.	20,000 at .98 & int., less $\frac{1}{4}\%$		19,638.89
July 16.	3,000 at .98 & int.		2,946.25
July 16.	1,000 at .98 & int., less $\frac{1}{4}\%$		979.59
July 17.	52,000 at .98 & int., less $\frac{1}{4}\%$		50,945.55
July 18.	87,000 at .98 & int., less $\frac{1}{4}\%$		85,247.91
July 19.	2,000 at .98 & int., less $\frac{1}{4}\%$		1,960.00
July 21.	1,000 at .98 & int., less $\frac{1}{4}\%$		980.98
July 22.	10,000 at .98 & int.		9,829.17
July 23.	14,000 at .98 & int., less $\frac{1}{4}\%$		13,727.77
July 25.	34,000 at .98 & int., less $\frac{1}{4}\%$		33,348.35
July 26.	57,000 at .98 & int., less $\frac{1}{4}\%$		55,931.25
July 26.	5,000 at .98 & int.		4,918.75
July 29.	5,000 at .98 & int., less $\frac{1}{4}\%$		4,906.95
1913			
July 29	5,000 at .98 & int., less $\frac{1}{4}\%$		4,906.95
Aug. 1	1,000 at .98 & int.		984.17
Aug. 1	3,000 at .98 & int., less $\frac{1}{4}\%$		2,945.00
Aug. 4	2,000 at .98 & int.		1,964.17
Aug. 4	16,000 at .98 & int.		15,753.34
Aug. 5	2,000 at .98 & int., less $\frac{1}{4}\%$		1,964.45
Aug. 6	34,000 at .98 & int., less $\frac{1}{4}\%$		33,400.27
Aug. 7	2,000 at .98 & int., less $\frac{1}{4}\%$		1,965.00
Aug. 8	6,000 at .98 & int.		5,910.84

1913.	PAR VALUE.	PRICE.	AMOUNT.
Aug. 11	1,000 at .98 & int.		985.55
Aug. 11	4,000 at .98 & int., less $\frac{1}{4}\%$		3,932.22
Aug. 13	13,000 at .98 & int., less $\frac{1}{4}\%$		12,783.34
Aug. 16	4,000 at .98 & int.		3,945.00
Aug. 18	10,000 at .98 & int., less $\frac{1}{4}\%$		9,840.28
Aug. 19	25,000 at .98 & int., less $\frac{1}{4}\%$		24,604.17
Aug. 21	5,000 at .98 & int., less $\frac{1}{4}\%$		4,922.22
Aug. 25	10,000 at .98 & int., less $\frac{1}{4}\%$		9,850.00
Aug. 26	1,000 at .98 & int., less $\frac{1}{4}\%$		985.14
Sept. 2	13,000 at .98 & int., less $\frac{1}{4}\%$		12,817.64
Sept. 2	50,000 at .98 & int.		49,423.61
Sept. 2	875,000 at .96 & int.		847,413.20
Sept. 2	125,000 at .96 & int.		121,059.02
Sept. 3	63,000 at .96 & int.		61,022.50
Sept. 3	62,000 at .96 & int.		60,053.89
Sept. 3	437,000 at .96 & int.		423,283.05
Sept. 3	438,000 at .96 & int.		424,251.67
Sept. 3	5,000 at .98 & int., less $\frac{1}{4}\%$		4,930.55
Sept. 4	18,000 at .98 & int., less $\frac{1}{4}\%$		17,752.50
Sept. 9	5,000 at .98 & int., less $\frac{1}{4}\%$		4,934.72
Sept. 11	9,000 at .98 & int., less $\frac{1}{4}\%$		8,885.00
Sept. 12	5,000 at .98 & int.		4,949.30
Sept. 17	5,000 at .98 & int., less $\frac{1}{4}\%$		4,940.28
Sept. 18	20,000 at .98 & int., less $\frac{1}{4}\%$		19,763.89
Sept. 19	10,000 at .98 & int., less $\frac{1}{4}\%$		9,883.33
Sept. 19	1,000 at .98 & int.		990.83
Sept. 22	3,000 at .98 & int., less $\frac{1}{4}\%$		2,966.25
Sept. 23	1,000 at .98 & int.		988.89
Sept. 24	10,000 at .98 & int., less $\frac{1}{4}\%$		9,890.27
Sept. 27	5,000 at .98 & int., less $\frac{1}{4}\%$		4,947.22
Sept. 29	34,000 at .98 & int., less $\frac{1}{4}\%$		33,650.56
Oct. 8	411,000 at .96 $\frac{1}{2}$ & int.		402,152.08
Oct. 9	1,279,000 at .96 $\frac{1}{2}$ & int.		1,251,643.60
Oct. 10	350,000 at .96 $\frac{1}{2}$ & int.		342,562.50
Oct. 14	13,146,000 at .96 $\frac{1}{2}$ & int.		12,873,950.83
Oct. 15	6,482,000 at .96 $\frac{1}{2}$ & int.		6,348,758.89
Oct. 16	1,007,000 at .96 $\frac{1}{2}$ & int.		986,440.42

## 1200 INVESTIGATION OF PUBLIC SERVICE COMMISSIONS

1913.	PAR VALUE.	PRICE.	AMOUNT.
Oct. 17	654,000 at .961½ & int.		640,738.33
Oct. 20	169,000 at .961½ & int.		165,643.47
Oct. 21	976,000 at .961½ & int.		956,751.11
Oct. 22	84,000 at .961½ & int.		82,355.00
Oct. 23	900,000 at .961½ & int.		882,500.00
Oct. 24	72,000 at .961½ & int.		70,610.00
Oct. 27	21,000 at .961½ & int.		20,603.33
Oct. 28	1,057,000 at .961½ & int.		1,037,181.25
Oct. 29	897,000 at .961½ & int.		880,305.83
Oct. 30	47,000 at .961½ & int.		46,131.81
Oct. 31	5,000 at .961½ & int.		4,908.33
Nov. 3	325,000 at .961½ & int.		319,131.95
Nov. 5	75,000 at .961½ & int.		73,666.67
Nov. 6	25,000 at .961½ & int.		24,559.03
Nov. 6	7,000 at .98 & int., less ¼%		6,964.03
Nov. 7	50,000 at .961½ & int.		49,125.00
Nov. 10	150,00 at .961½ & int.		147,437.50
Nov. 17	100,000 at .961½ & int.		98,388.88
Nov. 18	50,000 at .961½ & int.		49,201.38
Nov. 19	50,000 at .961½ & int.		49,208.33
Nov. 20	50,000 at .961½ & int.		49,215.27
Nov. 25	300,000 at .961½ & int.		295,500.00
Dec. 8	20,000 at .98 & int.		19,986.11
Dec. 9	300,000 at .961½ & int.		296,083.33
Dec. 17	16,000 at .98 & int., less ¼%		16,008.89
Dec. 31	968,000 at .961½ & int.		958,320.00
1914			
Feb. 19	10,000,000 at .961½ & int.		9,716,666.67
Feb. 25	2,000,000 at .96 & int.		1,935,000.00
Mar. 27	1,000,000 at .961½ & int.		976,944.44
April 1	500,000 at .961½ & int.		488,888.89
April 6	500,000 at .961½ & int.		489,097.22
April 9	1,000,000 at .961½ & int.		978,611.11
April 10	2,400,000 at .96 & int.		2,337,000.00
April 20	1,000,000 at .961½ & int.		980,138.89
May 14	3,000,000 at .961½ & int.		2,950,416.67
June 12	3,000,000 at .961½ & int.		2,962,083.33

1915	PAR VALUE.	AMOUNT.
Jan. 12	1,200,000 at .961½ & int.	1,159,833.33
Feb. 8	200,000 at .961½ & int.	194,027.78
Feb. 9	250,000 at .961½ & int.	242,569.44
Feb. 10	750,000 at .961½ & int.	727,812.50
Mar. 11	1,061,000 at .961½ & int.	1,034,180.28
June 1	75,000 at .97¾ & int.	74,874.90
July 21	250,000 at .971¼ & int.	243,819.45
July 21	5,000 at .97¾ & int.	4,913.89
July 27	55,000 at .971¼ & int.	53,915.28
Sept. 1	651,000 at .971¼ & int.	638,522.50
Sept. 24	500,000 at .961½ & int.	488,263.89
Oct. 28	500,000 at .961½ & int.	490,625.00
Oct. 28	25,000 at .96¾ & int.	24,593.75
Nov. 10	1,000,000 at .96¾ & int.	985,416.67
Nov. 16	100,000 at .96¾ & int.	98,625.00
Nov. 17	1,000,000 at .96¾ & int.	986,388.89
Nov. 25	2,000,000 at .971¼ & int.	1,984,722.22
Nov. 26.	1,000,000 at .971¼ & int.	992,638.89
Dec. 2.	1,000,000 at .96¾ & int.	988,472.22
Dec. 2.	6,000,000 at .97 & int.	5,945,833.34
Dec. 6.	500,000 at .97 & int.	495,763.89
Dec. 7.	1,000,000 at .97 & int.	991,666.66
Dec. 8.	1,000,000 at .97 & int.	991,805.56
Dec. 9.	500,000 at .97 & int.	495,972.22
Dec. 27.	1,000,000 at .97 & int.	994,444.44
Dec. 30.	300,000 at .97 & int.	298,458.33
1916.		
Jan. 3.	700,000 at .97 & int.	679,194.44
Jan. 4.	500,000 at .97 & int.	485,208.33
Jan. 6.	500,000 at .97 & int.	485,347.22
Jan. 7.	500,000 at .97 & int.	485,416.67
Jan. 10.	500,000 at .97 & int.	485,625.00
Jan. 12.	500,000 at .97 & int.	485,763.89
Jan. 14.	500,000 at .97 & int.	485,902.78
Jan. 17.	500,000 at .97 & int.	486,111.11
Jan. 18.	500,000 at .97 & int.	486,180.56
Jan. 19.	500,000 at .97 & int.	486,250.00
Jan. 21.	500,000 at .97 & int.	486,388.89

1916	PAR VALUE.	AMOUNT.
Jan. 24.	1,000,000 at .97 & int.	973,194.44
Jan. 25.	500,000 at .97 & int.	486,666.67
Jan. 26.	1,000,000 at .97 & int.	973,472.22
Jan. 27.	500,000 at .97 & int.	486,805.56
Jan. 28.	5,000,000 at .97 & int.	4,868,750.00
Feb. 1.	5,000,000 at .97 & int.	4,870,833.33
April 5.	100,000 at .97 & int.	98,305.56
April 7.	200,000 at .97 & int.	196,666.67
May 1.	200,000 at .97 & int.	197,333.33
May 2.	125,000 at .97 & int.	123,350.70
Total...\$108,999,000		\$106,790,440.01

## SCHEDULE 2A.

*Interborough Rapid Transit Company First and Refunding Mortgage 5% Bonds Syndicate, J. P. Morgan & Co., Managers.*

Statement of bonds withdrawn by Syndicate participants pursuant to article 8 of Syndicate agreement dates June 5th, 1912; and resolution of Interborough Rapid Transit Company Directors of August 7th, 1914.

1913	PAR VALUE.	AMOUNT.
April 16.	50,000 at .96 & int.	48,763.89
April 18.	50,000 at .96 & int.	48,763.88
April 19.	150,000 at .96 & int.	146,291.66
April 21.	7,305,000 at .96 & int.	7,124,404.18
April 21.	6,000 at .96 & int.	5,851.67
April 24.	1,000 at .96 & int.	975.28
April 24.	11,000 at .96 & int.	10,728.05
May 12.	25,000 at .96 & int.	24,454.85
June 19.	329,000 at .96 & int.	323,516.67
July 1.	4,000 at .96 & int.	3,840.00
July 1.	1,000 at .96 & int.	975.28
1914.		
Feb. 25.	632,000 at .96 & int.	611,460.00
Mar. 2.	60,000 at .96 & int.	58,108.33
April 30.	2,000 at .96 & int.	1,952.78

1915	PAR VALUE.	AMOUNT.
Sept. 20.	102,000 at .96 & int.	99,039.17
Sept. 20.	716,000 at .96 & int.	695,216.11
Dec. 9.	342,000 at .96 & int.	335,825.00
Dec. 9.	2,187,000 at .96 & int.	2,147,512.50
Dec. 9.	313,000 at .96 & int.	307,348.61
1916.		
Jan. 26.	125,000 at .96 & int.	120,434.03
Jan. 26.	875,000 at .96 & int.	843,038.20
Jan. 28.	875,000 at .96 & int.	843,281.25
Jan. 28.	125,000 at .96 & int.	120,468.75
Total. . . . \$14,286.000		\$13,922.250.14
May 6th, 1916.		

## SCHEDULE 3.

*Interborough Rapid Transit Company First and Refunding Mortgage 5% Bonds Syndicate, J. P. Morgan & Co., Managers:*

## EXPENSES.

July 22, 1913, Insurance. . . . .	\$ 357.50
July 31, 1913, Insurance. . . . .	27.23
Aug. 29, 1913, Insurance. . . . .	45.30
Dec. 22, 1913, Commissions paid on sales of Bonds. .	25,000.00
Dec. 30, 1913, Printing and Stationery. . . . .	743.76
Dec. 30, 1913, Telephone. . . . .	8.60
Dec. 30, 1913, Postage. . . . .	21.32
Dec. 30, 1913, Rubber Stamps and Pads. . . . .	2.00
Dec. 30, 1913, Advertising. . . . .	3,802.36
Dec. 30, 1913, Cables and Telegrams. . . . .	1,799.76
Dec. 30, 1913, Foreign Expenses. . . . .	1,119.12
Dec. 30, 1913, Sundries. . . . .	78.96
Jan. 17, 1914, Wm. Barclay Parsons: Engineer's fee	10,000.00
Jan. 19, 1914, Sullivan and Cromwell: Legal services	20,000.00
Feb. 10, 1914, Advertising. . . . .	2,418.12
Feb. 10, 1914, Cost of 210,000 pamphlets. . . . .	10,500.00
Feb. 10, 1914, Postage. . . . .	2,100.00
March 5, 1914, Guy E. Tripp, for services. . . . .	2,500.00



April 23, 1914, G. H. Backus: Legal services....	780.70
Dec. 8, 1914, Postage.....	23.64
Dec. 8, 1914, Printing and Stationery.....	51.75
Dec. 8, 1914, Sundries.....	3.00
Dec. 8, 1914, Rubber Stamps and Pads.....	.35
Aug. 27, 1915, War Tax Stamps.....	.10
Sept. 1, 1915, War Tax Stamps.....	.10
Nov. 26, 1915, War Tax Stamps.....	.20
Dec. 31, 1915, Rubber Stamps and Pads.....	2.35
Dec. 31, 1915, Postage.....	5.42
Dec. 31, 1915, Printing and Stationery.....	16.25
Jan. 5, 1916, Postage.....	5.16
March 6, 1916, Expressage.....	4.00

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Total . . . . . \$81,415.05  
May 6th, 1916.

Q. (By Mr. Moss.) Did you know whether any of this stock passed to any official of the city government? A. What stock?

Q. Bonds, I mean. A. I don't know.

Q. Well, I am asking you if you have any knowledge or information as to whether any of these bonds passed to anyone, directly or indirectly, who was in the city government. A. I don't know. "Passed to " how do you mean "Passed to?"

Q. Passed to them, transferred to them, sold to them in any way. A. I don't know whether they were sold to them because they may have bought them outside. They were not members of the syndicate.

Q. I don't suppose they were because the syndicate was composed of bankers I assume.

I want to know whether you have any information as to whether or not any of these securities reached any of the city officials. A. No.

Q. Do you know what the quotation of any of these bonds is now? A. It is every day in the papers. It is about ninety-eight and a half.

The syndicate got rid of them at about ninety-six or ninety-seven. A. Yes, sir, ninety-six and a half and ninety-seven.

Senator Thompson.—The ninety-eight you say were practically all exchanges for old bonds?

Mr. Lindabury.—Exchanges yes, some are down at ninety-eight and ninety-eight and a quarter. Those two groups comprise all exchanges.

Senator Thompson.—You mean by that old Interborough bonds were given up and these given in place of them?

Mr. Lindabury.—On the basis of ninety-eight less a quarter when it was to a broker.

Senator Thompson.—They were allowed par for the old bonds, I assume.

Mr. Keys.—One hundred five.

Senator Thompson.—One hundred five.

Q. (By Mr. Moss.) Cut out your train entirely? A. (By Mr. Morgan.) I have cut it out until six o'clock.

Q. We won't be worrying you very long. A. That's good.

Q. I want to call attention upon the record here at pages 351 and 3, statement of monthly balances anud page 398, statement pertaining to interest on bonds. That is of our own record here. It is not necessary to carry Mr. Morgan over old matters that are covered by other witnesses.

Was there any agreement made between you and Mr. Shonts, or anyone representing the Interborough on or about June 1909—no, the early part of 1909, when you had your first conferences with him? A. We bought some notes from them at about that time. We bought ten million first mortgage, five per cent. bonds on June, 1909. I see the memorandum here.

Q. What conversation or what arrangement did you have with Mr. Shonts about charges to be made to him for such services as this two hundred fifty thousand? A. As we had rendered to him, I don't think we had any arrangement with him at the time. The theory of the transaction up to the end of 1911 was that when it came time to issue these bonds we should sell them for them on commission, which commission, I think, was to be three per cent.

Is that correct? (To Mr. Lindabury.)

Mr. Lindabury: Yes.

Q. Was there any definite understanding between you and Mr. Shonts regarding the charges you ere going to make him for this financing of the big proposition? A. No. We were to sell bonds on a commission basis. That was the theory.

Q. You did that anyway. A. We didn't do it because the thing didn't happen. The bonds weren't sold.

Q. Well, it came ultimately. A. After we had made this other agreement. The thing was abandoned in 1911 and taken up again in 1912.

Q. Originally your compensation was going to be commission on bonds. A. Three per cent. commission on bonds.

Q. Now, you ultimately got that on the big issue, one hundred some million dollars? A. No, we bought the bonds outright. That wasn't a commission at all.

Q. But you got the difference? A. Two and a half per cent. We took the risk. We bought one hundred and sixty millions of bonds from them.

Q. How much risk did you think it was? A. I didn't know. It was a pretty heavy one. It was the largest transaction of the kind that had ever been undertaken in this country and I wasn't at all sure that I was going to get any syndicate in shape when I was ready to go ahead.

Q. Now, your original arrangement. A. They haven't suggested it, I may say also.

Q. You didn't expect it, either.

How many different propositions were submitted? There were four altogether, I think. A. I don't know. There were an awful lot.

Q. Every time a proposition was rejected by the city, didn't that strike you as being the end of the business? A. I always thought it was, yes. And then the city was anxious for its subways. We were anxious to have the company do the business and the question came up again. Finally at the end of 1911 it was so completely abandoned that it took Mr. Seth Low and Mr. Rae of the Pennsylvania to get it started again.

Q. Did you take the mayor at his word in that letter of July,

1911, and for the reason that that letter had been written draw the line underneath it? A. Wasn't there another offer made just about that time? I have got to look through my chronology here.

Q. The mayor had written this "Damnable rascality" letter about July. Did you take that as being the end of the Interborough's proposition? A. "June 27, 1911, the Interborough declines the acceptance of the conference consideration." That I took as the end of the business.

Q. What up to November? A. Nothing. I went abroad in September. I found that five hundred thousand dollars there and I said, "I think that is a very sound payment." I entirely approved it without having negotiated it.

Q. Did you have anything to do with the resumption of the negotiations? A. No.

Q. Weren't you consulted at all? A. I was consulted. I had nothing to do with the starting of it. Mr. Rae, as I said, was the man who is responsible for getting them started again.

Q. But, Mr. Morgan, you were in Europe in 1909 and, therefore, you didn't hear the mayor's speeches. A. Yes, every Autumn, I was in Europe, sir.

Q. You must, however, have seen this letter of the mayor's in print, whether you were or not. A. I probably did.

Q. You knew something had happened and you cleared the thing off the books, so to speak. When you got back in the Autumn of 1911, you found it was— A. It was nearly Christmas time.

Q. You found it was beginning to revive. A. I think it didn't begin till January, did it?

Q. January, 1912? That letter is February, 1912. A. February, 1912, was when they started again.

Q. Were you consulted about the redivivus? A. You mean about the renewing of the negotiations? I suppose I was.

Senator Thompson.— I didn't know what he meant by that.

Mr. Moss.— That is old New York vernacular.

Q. Now, were you consulted with Mr. Morgan? Were you advised with concerning the renewal of operations by the Interborough? A. I presume so.

Q. Did you know that Seth Low met with the directors of the Interborough Company before there was any notice of public appearances? A. I don't know that I did or not very likely. If he did it, very likely; I didn't.

Q. That he sat in with the directors? A. No, I didn't know it. I say I didn't know it. I don't know now that I did know then.

Q. It appears so by their minute books. What to your mind, what to your information, what through any source of information you had, was the way in which these two city officials were garnered? A. The two city officials?

Q. Yes, the mayor and the comptroller. A. I never had any information.

Q. Well now, you see this affair in July was so sharp, that all was so sharp, the vote the next day was so sharp, that it caused you to believe the whole thing was dead. A. Yes.

Q. Now, they are against us for sure. You drew your line under it. Evidently from what you said, the pre-election speeches didn't make any impression upon you. A. None at all. They very seldom do.

Q. You don't pay much attention. Well, Mr. Morgan, if you could always tell who is pulling the wires attached to the candidate, you would know how to appraise pre-election speeches. A. Well, I have never been interested in that subject, sir.

Q. They were readily appraised when you knew for a fact from Shonts' statement that he was in pleasant converse with the mayor, visiting him, and the mayor was willing to act as arbitrator. I see how that works but when it came to July, it was then the "Damnable rascality" letter was written. A. It is a quotation I understand.

Q. And that letter was made good by the vote next morning and as good and sturdy, old citizen as you were thought the thing was dead.

Now, I would like to know what, if you can possibly give us any information, as to the line of argument which influenced the proceedure, assault and battery or what it was that brought these two erring city officials into line again. A. I haven't an idea.

Q. Didn't you talk that over with Shonts? A. I don't know.

Q. Now, Shonts got a big bonus in grateful recognition. A. And he worked hard.

Q. He worked hard and was entitled to it. Everybody said so, indeed, Mr. Sullivan said he would be glad to give him two hundred fifty thousand instead of one hundred fifty thousand for it was Mr. Shonts that did it and nobody else. A. I don't know. Mr. Rae and Mr. Low might be able to tell you something more than that. They knew all about it, as I recollect it and understand, when I came back in 1912, when the thing began to boil up again.

Q. Did you know that there was a gentleman named Sprague who made a proposition to the city? A. I heard of him.

Q. He had pretty good backing. A. Did he, what of backing?

Q. As good as J. G. Whitney and others behind him, but Mr. Morgan, any men that could do the work would have been recognized by the men with money. A. I think that is likely.

Q. And certainly there is nobody got better engineering ability than Sprague or Whitney or the Roeblings. Now, here was a proposition to undertake to build a line that could be built within the resources of the city, constructing the "H" cutting over to Brooklyn and attacking the problem right here in New York, tying Brooklyn on. You never heard of it? A. I saw the proposition.

Q. At the time it was made? A. I believe so.

Q. It was never printed in the reports of the Public Service Commission. A. I thought it was. I heard talks about it, I think. I never looked into it. That was the Public Service Commission's business.

Q. I believe it was printed in the newspapers. A. I think it was published.

Q. Was there any discussion between you and Mr. Shonts as to the effect of the Sprague proposition upon the propositions of the Interborough Company? A. No, my recollection of the thing is the thing was mentioned and that I asked Mr. Shonts whether it was substantial proposition and whether it was one that the Public Service Commission was likely to take. This is all hazy and half guess. He would say, "I don't know" or "I don't think it is."

Q. Now, the difficulty with the Sprague proposition was not upon its engineering side or constructive side. It was on its financial side, wasn't it? A. I think so, yes.

Q. You had gone in with the Interborough? A. Certainly.

Q. Was there anybody else that would have financed Sprague in the face of your interests with the Interborough? A. I don't see why not. I couldn't have. It wouldn't have been right for me, if Sprague had brought the best proposition in the world, to do it.

Q. I may have a more exalted opinion of your relation to the financial affairs in the city than you yourself. A. It seems as if you had.

Q. But the thing strikes me enough for me to ask you that question. A. Yes.

Q. Wasn't the Sprague proposition or anything else like the Sprague proposition doomed from the start because you were tied up with the Interborough? A. Because we were tied up with the Interborough? No, I don't think so, we had no influence. We, ourselves couldn't have taken an interest in the other thing.

Q. You were enough interested in the Interborough proposition to fight for it, weren't you? A. As a banker should fight.

Q. How does a banker fight? A. Well.

Q. I don't know. I have heard that they do. I have heard cries of distress from some quarters. I don't know the methods, but I am serious about it Mr. Morgan, as it is a proposition that is so or isn't so, but isn't the financial situation such at least in this city or this part of the country, that if you, your house, the syndicates that you control, are known to be in on a proposition, that you have got it and nobody else can take it from you? A. don't think so. I shouldn't assume any such power as that. I don't think I have it. This is a big proposition.

Q. This is a big proposition, the biggest bond proposition I have heard of. A. The biggest proposition I have heard of in this country.

Q. And if I were in your place I would feel a great deal of pride in having put it over. A. I do.

Q. But could anybody else in your opinion have successfully competed with the Interborough on a proposition of this size, if it was known that you had given yourself to the Interborough proposition and in the ways that a banker should and has a right to fight for it, would fight for it? A. I don't know. I don't see why not.

I don't know what names I should give if you ask me who would take it up. I don't know.

Q. No, you don't know Mr. Morgan, thank you for asking yourself the question. A. I don't know whether I could or not. I have never been up against a proposition on which I was on the other side, too. I have never had to go around and try to collect people to handle a proposition of the kind you describe.

Q. But, wasn't it understood that you had gathered the forces that could finance the Interborough and would finance the Interborough? A. When did Mr. Sprague make this offer, if I may ask?

Q. I don't know. It was in 1911. A. It was before we made the syndicate. Then I don't think it was understood at all. The thing wasn't public.

Q. Well, hadn't you been recognized as the subway banker all the time? A. We had been sometime the Interborough bank.

Q. Yes, the Interborough bank. You would handle Interborough notes and there was general knowledge of it? A. Oh, yes, we did it from the time the Public Service Commission was first instituted.

Q. Well, do you think it was the fact of your associations with the Interborough that enabled them to take the bold stand that they did in the face of the defection of Gaynor and Prendergast, to meet their movements by stiffening and stiffening up their proposition until in 1912 and '13 they got a proposition as far away from that of December, 1910, as you can make it. A. I think it was because we were their, because we told them that we could supply that money.

Q. Then the Interborough plus Morgan were practically impregnable? A. Oh, I don't say that.

Q. All they had to do was to wait and have it fall into their laps and the longer they waited the bigger would be the windfall. A. I don't see how you mean, Mr. Moss.

Q. It went this way, 1910 it is proposed to do it with their own money, July they were going to have city money. A. Yes.

Q. July and December they were going to have city money, but they went at it easy and they allowed the city the first five years' profits and didn't say anything about preferentials. As these



officials got madder and madder and as the mayor wrote his "Damnable rascality" letter, then the preferential idea began to come in. It was no first five years' profits for the city. Before any profits could come there were preferentials to be taken out until finally in March, 1913, a contract was executed which was no longer an even division even but gives the city many millions of dollars more than the company had to spend and defers the city even in the collection of its own bond and amortization charges, so that it has got to put it in the tax rate to get the money to discharge its obligations and the time of profits is far removed. Now, that is the progress of events. A. Yes.

Q. And that is why I have said that the longer the city balks, the more officials apparently in the open, antagonized the Interborough, the stiffer grew the Interborough's position. Interborough plus Morgan was impregnable and the longer the city fought, and the longer the city waited, the bigger was the windfall. A. Windfall?

Q. Yes, windfall.

Wait a minute. Who are Kissel Kinnicutt & Company? A. They are a firm of bankers in Wall Street. They are very good people. They were the people to whom we, as syndicate managers, sold. They represented a large part of the people who bought the bonds.

Q. They were selling for another profit? A. They were selling for another profit. I suppose they did. I hope they made a profit.

Q. A gentleman who bought some of these bonds from Kissel Kinnicutt sent me the circular upon which he bought them. A. Yes.

Q. This circular first discusses the security, then comes another subdivision, "Relations Between Company and City." It says,

"The city contracts to build the new subways. The Company contracts to contribute not exceeding fifty-eight million for this purpose and contracts in addition to expend twenty-seven million on elevated equipment, a total expenditure by the Company of one hundred seven millions. As the city is obligated to build the new subways the expenditure by the city will be the difference between the fifty-eight million contributed by the Company and the total cost. It is estimated

that this difference will amount to at least sixty-six million. Before the city receives any return on this investment of sixty-six million or more in new lines, the contracts entitles the Company to take out of net income approximately fourteen million seven hundred sixty-nine thousand per year for the Company's own purpose. This is five million four hundred nine thousand dollars in excess of the nine million three hundred sixty thousand required for five per cent. interest and one per cent. sinking fund on the entire one hundred fifty-six million dollars of bonds, which it is estimated will be outstanding upon the completion of the new subways as now under contract. In effect it is a *quasi*-municipal security because the city is willing to subordinate its claim to interest on its expenditures of sixty-six million dollars or more."

But the figures are displayed showing the amount of money that has got to be paid out of the income and dwelling upon the *quasi*-municipal character of the security and the practical responsibility of the city behind these bonds. They are not city bonds but practically they come pretty close to it.

Now, I call your attention to this circular and there have been many others like it, in response to your query about "Where's the windfall?" Don't you think in comparing a proposition such as that in 1910 where the company was begging for a chance to construct the subways with its own funds and then passing to another form where they are letting the city into the responsibility of providing money, it gives the first five years' of profits to the city and then it divides afterwards without these preferentials. You wend your weary and troublesome way past these recalcitrant city officials and finally land in March, 1913, with a contract by which the earnings are milked to the tune of over fourteen million dollars before the city can begin to get a cent for its own bond charges—its own carrying charges. Don't you think it is something like a windfall? A. No, this is the result of long drawn out tradings.

Q. Not only of long tradings but of beating down opposition. Beating down what you might call vicious opposition. A. That part of it I don't understand. I never was concerned in beating down any vicious opposition.

Q. It must have gotten out of the way or you never could have gotten that contract.

Now, Mr. Morgan, your last few answers indicated I think, that the strength of the Interborough was in the relation that it had with you and the financial forces that you could control. A. If that is what you draw from it, I want to add also that the strength of the Interborough was its own position. It was operating the only subway that was operating and it was operating it exceedingly well and its strength, the strength of its position was not wholly our relation to it.

Q. Now, Mr. Morgan, I want to ask you how it is that you control financial forces to the extent that you can get behind a proposition of this kind and practically control it, practically monopolize it? A. I don't know how to answer a question like that.

Q. How do you get these financial forces together? Now, here is a situation sharper than any I have ever known. In the city of New York, where public officials fairly squirm. They have announced their positions regarding subways, the city building and all that sort of thing. They take all their chances and go before the community upon those positions, then they come face to face with a situation and they back and fill, they squirm one way and they squirm another way. Leave out of all consideration the possibility of ulterior forces, but let us suppose that they are just meeting the inner currents of the situation. They are face to face with the Interborough and the strong people that are represented in that, but it is not simply the Interborough, it is the Interborough plus Morgan, a recognized financial power, a man, who having gathered his financial forces behind him and having pledged them to the Interborough Railroad practically dominates the situation and practically shuts out others that might come in, the Sprague people, for instance. How do you gather these forces together? How do you hold them? A. Why we don't gather them together and we don't hold them. Take the thing from our end of it for a moment.

Senator Thompson.— That is what I would like to understand, the banking end of it. A. Yes, when we were going through the financing of the Brooklyn Rapid Transit.

Senator Thompson.— Yes, now, these contracts were made in

March, 1913, and it seems they were financed before they were made, in other words. They raised forty million dollars from the three banks. In this way they paid interest on it at five per cent. from the first day of October, 1912, till March, 1913, six months. They discounted it. They said it wasn't discount and Mr. Shuster said it was. And it has been undecided and we will perhaps let you decide that, but anyway, they got only ninety-four for them. So they took out two million four hundred thousand dollars, and the interest at two and a half per cent. would be another million, still they didn't turn over the money to the Brooklyn Rapid Transit at all. They couldn't collect on it or anything. Now how is that done as a matter of fair finance? I would like to have your opinion about it because you are not interested in it or is your bank. A. Everybody has his own problems. I don't know how they faced their's. I have had nothing to do with it. We were face to face with a problem on the Interborough when they finally got their contract and we said "Here is the proposition." "We believe that the bonds are worth that much money and if you agree with us, here they are at your disposal. They have cost us ninety-three and a half. We will sell them at ninety-six." Everything was known and quite enough and more than enough people applied to take interest in that syndicate.

Senator Thompson.— They came and asked you? A. Yes, we sent out notices.

Senator Thompson.— From what class of men, presidents of banks and trust companies? A. Individuals and large investment companies.

Senator Thompson.— You take them in at such a percentage. A. When they come in and apply, and if they do apply they want that much and if we can give it to them, they get it, so many of the bonds.

Senator Thompson.— And they take those bonds. The syndicate takes those bonds? A. Each man for himself.

Senator Thompson.— That is just what I wanted to know. That is news to me. I supposed they all acted in concert and

divided. A. They do act in concert. They take them under conditions.

Senator Thompson.— I will tell you what my idea was, that these were turned over to you at ninety-three and your customer would go to the telephone and call up five or six fellows and ask them if they wanted to be a part of the syndicate and if they said, "Yes," they would and you would dispose of them again and divide the profits. A. No, you can't work things out that way. It is all in the syndicate. The notice is sent out or given out.

Senator Thompson.— Really so far as you are concerned, the syndicate is the public that buys the bonds? A. Yes, and then we act for the syndicate in selling them for its account. We are part ourselves of the syndicate. We have a large interest in it.

Senator Thompson.— Of course, the fact that a member of the syndicate may be a broker or a banker or something else, is all right. A. That doesn't interest me so much as the question of taking up the bonds when called upon to do so.

Mr. Lindabury.— J. P. Morgan & Company, and the other companies, Kuhn-Loeb & Company and the confidence that the investing public lays in the management of the syndicate is what counts.

Mr. Moss.— Mr. Morgan can be a member of the ultimate syndicate.

Mr. Morgan.— The last one.

Q. (By Mr. Moss.) You can be a member of that too? A. We haven't been a member of the one which we sold.

Senator Thompson.— We had this all fixed up where there couldn't be but one syndicate, now there's two? A. No. The sales of the bonds have been made to another body of people which called themselves a syndicate.

Senator Thompson.— You were a subscriber to the syndicate yourself. A. Necessarily.

Senator Thompson.— Were those allotted to you, as what your

statement has to do? A. The syndicate buys the bonds and instructs us to sell them except such as they have withdrawn from sale. We sell the bonds for account of the syndicate. At the end of the time we divide up the profits. Each man takes the bonds or his money.

Senator Thompson.—If I come in there and say I will take five hundred bonds and you sold four hundred of them to my account, then I would have to take the other hundred off your hands? A. You would take the other hundred at the end of the time or when called upon.

Senator Thompson.—I would have to satisfy you as to my ability to take care of it? A. Yes.

Senator Thompson.—What share in this syndicate did you have? I understand it is about one hundred fifty-four million dollars. A. About eight per cent. of the total. Twelve millions and a half.

Senator Thompson.—Then you act for the syndicate, I suppose, for a commission? A. We act for the syndicate without commission because we are paid a commission in the difference before.

Senator Thompson.—Your commission came in the difference? A. Our commission came in the two and a half per cent.

Senator Thompson.—I see how that works.

You didn't act in this matter until after the 19th of March, 1913? A. No.

Senator Thompson.—You acted after that then. Kuhn-Loeb & Company went on and gave their mortgage and bonds after they had something to give on? A. Yes.

Senator Thompson.—In the Brooklyn Rapid Transit case they organized a company whose sole asset was this contract that was not signed for six months, but they gave a mortgage of forty million dollars. Now Kuhn-Loeb & Company financed that company and got two million four hundred thousand dollars for—that's a question—discount or prepaid interest and two and a half per cent. commission on it. Can a banker do that? A. Evidently

they can. They did that. That answers that. You see, they had a very different proposition from this one. Here was the Interborough which already, before it signed this contract, was showing enough to pay the interest on these bonds. The Brooklyn Rapid Transit was not showing interest enough to do that and they had a very much more difficult proposition.

Senator Thompson.— They had the New York Municipal Railway Corporation. A. But that fell back on the Brooklyn Rapid Transit as a matter of fact.

Senator Thompson.— And they guaranteed? A. I don't know. Any how that was really the assent.

Senator Thompson.— Of course, they got their pay. They advanced the money as the building went on. A. Yes.

Senator Thompson.— But do you think, as a banker, that they had a right to go back and force this money up before the contract was made so that they make that profit and interest or discount or whatever it was, of three million six hundred thousand dollars before the contract was made at all? A. I can't pass on that. That is a question with all the circumstances.

Senator Thompson.— For instance, you charged two hundred fifty thousand dollars, you said you did, for service. A. Yes.

Senator Thompson.— If they put in this for service, you wouldn't think you had the right to charge that for interest on money not yet loaned? A. I don't know anything about that. You can't find from me about Kuhn-Loeb & Company's business because I don't know it and I don't run it.

Senator Thompson.— I am giving you some of the instances. Mr. Shuster of our Committee, that we have confidence in, says that that is a discount and he read a lot of books that backed him up.

(Laughter.)

Mr. Moss.— They were authorities.

Senator Thompson.— Yes, different colors on the bindings and three lawyers of the Brooklyn Rapid Transit were here and said

that that was wrong and the Auditor was here and he said it was nothing but prepaid interest, but they got the interest besides.

(Laughter.)

Mr. Lindabury.— That was it. Part was prepaid and part was paid afterwards.

Senator Thompson.— And they never got the principal? A. They haven't got it yet, but they will.

Senator Thompson.— I assume so. Is that proper banking or is that brokerage or something else? A. I don't think it is brokerage. When it comes to a question of whether it is proper banking, it isn't under the National Banking Act. It isn't banking of that kind.

Senator Lawson.— The Chairman wants to know if that is the usual, customary method of banking? A. No. I may say, I wish it were.

Senator Thompson.— Morgan & Company don't do business that way? A. I don't want to be put in a position to criticise a business like that.

Senator Thompson.— Besides all that, after they got all these moneys, they charged it all to the city's share? A. That is all to do with the Brooklyn Rapid Transit, of which I have nothing to do.

Senator Thompson.— Now, it is the taxpayer I am going to ask you about and I will sustain your objection on the other part. A. Then you will have to ask the city officials on that.

Mr. Lindabury.— You might just as well ask him about my thought of asking about Mr. Moss' method of charging cases.

Senator Thompson.— You don't blame this Committee when they are charged up that way, do you?

Mr. Lindabury.— I am not criticising the Committee or approving it.

Senator Thompson.— It don't make any difference because we are used to that any how.



Q. (By Mr. Moss.) Do you know Mr. James G. Cannon, President of the Fourth National Bank? A. (By Mr. Morgan.) Yes.

Q. Is that a bank that is associated with you? A. I think we have at times.

Q. Is there a close connection? A. No, except that Mr. Cannon has been very useful and very fine in a great many things that he has done in times of crises.

Q. In connection with your affairs? A. Well, in connection with the whole business affairs of the town.

Q. Hasn't there been a recognized relation between Mr. Cannon and you? A. No, I think not.

Q. How about the firm before you became its head? A. No.

Q. Well, I ask you that because I have heard that Mr. Cannon is being Morgan friend. A. Lots of people are friends of ours. Mr. Cannon was a friend of my father's.

Q. I assume in the banking business there are persons that cohere? A. Obviously.

Q. In time of trouble, you will find them associated? A. I think in time of trouble, you get them all together. That is my experience.

Q. It depends upon how big the trouble is. Wasn't the Fourth National Bank in syndicate with the Morgan interests? A. Very possibly, I don't know. I don't think we are giving out lists of all the syndicates.

Q. I haven't asked you for that. A. No.

Q. On this issue of bonds, one hundred seventy million, I think. A. It has been reduced since.

Q. About how much? A. About one hundred sixty million.

Q. About one hundred seventy million at two and a half per cent. would be four million two hundred fifty thousand, subject to the reduction which you have suggested? A. Yes.

Q. That has been your profit on this transaction? A. It hasn't all come to us yet.

Q. But it will? A. I hope so.

Q. So if it were one hundred seventy million when the bonds are sold, the portion of it which goes to you is four million two hundred fifty thousand? A. Which goes to us, yes.

Q. At ninety-three and a half per cent. aren't those bonds better than six per cent.? A. No.

Mr. Moss.—How is that Mr. Morse?

Mr. Morse.—No. It is about a five and three-eighths basis.

Senator Thompson.—Eighty-three and a third would make it six per cent.

Q. (By Mr. Moss.) Well now, assuming one hundred seventy million for the face value of the bonds. Six and a half per cent. off would take off eleven million and fifty thousand dollars. Of that eleven million and fifty thousand dollars, you get four million two hundred fifty thousand? A. It isn't a question of arithmetic.

Q. I am merely using the figures because I have to say something. Is there any figuring in existence which will show the profit in addition to that four million two hundred fifty thousand which the other syndicate holds? A. Not until the bonds are all sold and the negotiations closed.

Q. Well what the company would get out of this one hundred seventy million would be one hundred fifty-nine million nine hundred some odd thousand? A. They get ninety-three and a half per cent.

Q. Six and a half per cent. off? A. Yes.

Q. Have you heard of any sales of these bonds at one hundred? A. No.

Q. Some question was raised about this term by Kissel-Kinnicutt & Company of "*Quasi-municipal*" bonds. A. That is their expression.

Q. Did they use that expression without consulting with you? A. I think, very likely.

Q. Don't you agree to it? A. I don't know what it means.

Q. Is there any city security behind it? A. No.

Q. Isn't there? A. Only the city owns subways which are leased to the Interborough.

Q. Who makes up the deficiency? A. Nobody makes up any deficiency of the Interborough's. If the Interborough doesn't make up enough interest to pay the interest on these bonds.

Q. Aren't they accumulative? A. If they don't get them out of the earnings they don't get them anywhere.

Q. Hasn't the city got to sustain the proposition? A. No.

Q. Hasn't the city got to pay the interest on its own bonds? A. Yes.

Q. Isn't there in your mind any way in which the strength of the city is behind this proposition? A. No. Technically, no, actually as a matter of fact, that is I suppose where they get their *quasi*-municipal. No, there is nothing that you could enforce against the city at any time.

Q. Actually, yes? A. Actually, yes. The city can abandon it.

Q. The city can abandon it.

Senator Thompson.—The first earnings go to pay the interest on the railroad bonds. The railroad bond interest has preference. Now we are finding that approximately it is going to cost forty million dollars more than was originally figured. That will fall on the city? A. Yes.

Mr. Moss.—That seems to be the burden of Mr. Prendergast's latest report to us. Mayor Mitchel has estimated twenty-five million and it seems to be nearer forty million now and all the counties have not been heard from. The investment of the Interborough is limited. All the excess has got to be made up by the city and the city has got to do it or the whole thing has got to go to smash and everything that has been put in it. A. It has got to go through until it runs.

Q. The city has got to see it through. Now, if the city had undertaken to float a thing with its own bonds it couldn't have sold the bonds at less than a hundred, could it? The constitution says something about that. A. No, it might have had to pay a large rate of interest.

Q. Not over four and a half per cent.

Senator Thompson.—When did they sell the bonds. A. At intervals as they need the money, they sold some subway bonds, but I don't know.

Senator Thompson.—The information we have is that these bonds sold at four and a half and a premium of one hundred one. They didn't hire any lawyers to tell whether they were good or not.

Mr. Moss.—But by this method it has become possible to take a bond, face value one hundred per cent. of cost, and sell it at six and a half per cent. discount and have it carry five per cent. interest at the same time. This is a method by which you get the practical power of the city behind the bonds and the method also

by which the bankers can make a pretty, good, whopping commission on. A. If the city would have issued the bonds and supplied the subway with all the money it wanted and built the subway for it, I think they could have made that trade very easily. I should have been delighted. We needed every drive there was in us to get that money at that time.

Q. And have you, since I questioned you this morning, had any recollection at all about the method that was taken to depreciate the city's borrowing capacity? A. No.

Q. Do you remember that Controller Metz in his report to Mr. Gaynor just before he took office, reported resources of sixty million dollars? A. No, sir.

Q. Didn't you take those matters into consideration at all? A. In the lunch interval?

Q. No, in any important conferences that you had with Mr. Shonts? A. The only thing that I remember about the city debt limit that was discussed at all was at the last interview when the city officials agreed with us that the contract could be properly done. In 1912 when we were there and Mr. Prendergast was there and Mr. Prendergast made a great difficulty about being sure that the city debt limit was sufficient for them to take up this debt, which they thought would be sixty-two millions, I think, and he was in doubt because he said, "I must not come right up to the debt limit for I don't know whether I am going to get the money for the school houses next year, if I do." He said, "I think the sixty-two millions, I can go, and if that is the case, we will feel that the Interborough is safe to ahead."

Q. Don't you remember that there was any amount of argument and any amount of statement in 1909 of the city having plenty of debt limit to build subways and almost as soon as the administration changed, the government stated in 1910, and it was persistent, that the debt limit had been frittered away by the McClellan administration and there were constantly difficulties thrown in the way of the city building? A. I don't remember.

Q. Now, it has been alleged, Mr. Morgan, and I put these questions in view of these allegations which I have read over and over again in various places, that one of the plans that was operative by those interested in the Interborough and also in the Brooklyn

Rapid Transit, was the apparent dissipation of resources which the city had, so that officials who were going to play into the hands of the Interborough and Brooklyn Rapid Transit might take a public position, no matter what they said before election, the debt limit had been passed and, therefore, it wasn't up to them. A. I can't say anything about any other people. I can only say for myself that the idea would be entirely foreign to me and I know nothing about it.

Q. I will put those questions to somebody who was closer to them later on. A. All right.

Q. Would you have financed this proposition without the preferential and the guaranteed interest? A. I would have taken a great deal to persuade me that it was safe. I would not have financed the proposition unless I felt it was really safe.

Q. Did you urge the preferential in the interest of safety or whatever you may call it? A. I think I did. May I put in a word about what I understand the preferential to be? Here was the proposition that was before us of the city using its money and also enlisting private capital. Private capital was going to turn in not only the new money that it was going to use in building the subway but also the old Interborough with its earning power and its capacity as a going concern. The preferential was based on the earnings of the Interborough for the average of years before two or three.

Q. Now, making any allowances for depreciation? A. You have got the terms and phases better than I. That is what I understand the preferential to be. The consideration one side put into the partnership.

Senator Thompson.— This proposition of March 22, 1910, was one where there was no mention of preferential and the Interborough furnished all the money? A. Yes.

Senator Thompson.— Mr. Shonts said that he talked with you about that and you considered it together. A. I think so. It was so. It was a much smaller proposition than the one that finally was shaped.

Senator Thompson.— Smaller, in what way? A. It would have cost less money.

Senator Thompson.— You mean there weren't so many railroads? A. They didn't have it run out into the Bronx and the wilds of the Parkway. You will find that there is a great reduction. In fact the attack on that plan was made by the city officials that we were getting the tenderloin of the thing and we weren't paying any attention to the outside people.

Senator Thompson.— You provided the Brooklyn extension that you don't now have. A. That is a short one.

Senator Thompson.— That is the tunnel under the river and the East Side extensions to one hundred ninety-fourth street, etc., and pretty near as far as they go now. A. As I recollect it, there was such a list there. Also, there was no competition.

Senator Thompson.— Wasn't it at that time considered? The situation is that Wilcox was ready to accept this on behalf of the Public Service Commission. The offer was written and not signed by Mr. Shones but sent to Mr. Wilcox and they sat up all night with it and they took it up with the board of directors next day and then along about the 29th Wilcox began to inquire and they didn't do any more business? A. Yes.

Senator Thompson.— Do I understand you, that it took a lot of energy to raise that money? A. Yes.

Senator Thompson.— And you were in a position that any help you could get in the way of getting the money would be appreciated? You were looking for that? A. Yes.

Senator Thompson.— Well now, it rather occurred to us that Mr. Shonts was a little impulsive about this situation and made this offer and he got in it and came back and talked with you and you suggested to him that if that went through the city had this money, could raise it, and why not try and make an arrangement with the city to use part of that money. Now, that is the way it occurred to us. A. I think probably what he said was— Now I am guessing more or less, as you say.

When that proposition came up they found on looking it over that the city exempted that proposition, the one that they withdrew afterwards. They figured that they would be up against a

Madison Avenue subway, with a Lexington Avenue subway built next to it.

Senator Thompson.—But you could put a clause in it giving you an option on it in the future. A. They wouldn't accept that clause, though.

Senator Thompson.—Did you make the suggestion? A. I don't know, if so, I am very glad.

Senator Thompson.—Was it suggested that he take it with Mr. Gaynor to see what could be done? A. No.

Senator Thompson.—Mr. Shonts testified that he got Mr. Towns to introduce him to Mr. Gaynor and he went down on a Sunday and we fixed that date. He said that he introduced him that day. That is what he got him for and he did some other things besides. He did this for five thousand dollars. A. I think so because Mr. Shonts could have gotten in touch with Mr. Gaynor cheaper than that.

Senator Thompson.—It appears in the record that Shonts already knew him. Don't you see the state of mind that leaves us? A. No, I don't see why it should, but still.

Senator Thompson.—If you have any idea on that subject I wish you would think it over and help us out on it and if the transaction was all right, I would like to report on it. A. I think it was.

Senator Thompson.—If it isn't, you are about as much interested in it as anybody I know. A. I should be very sorry if it wasn't right.

Senator Thompson.—The facts as they come along here are rather peculiar and they do deserve an explanation of the situation. A. If I can give you an explanation of them why, I would do it.

Senator Thompson.—I will try and get up the facts in chronological order and I will submit them to Mr. Lindabury. I will try and do it over Sunday.

Mr. Lindabury.—All right, Mr. Morgan will be very busy next week.

Mr. Morgan.— I will take it up and give you an answer.

Senator Thompson.— Come up and tell us or write it.

Now here are some questions that have been submitted to me. I don't know whether they are impertinent or pertinent, and if there are any objections to these questions we will take them up.

At the time of the proposition of March 10, 1909, was there not pending amendments to the Traction Law allowing private capital in the construction of subways? A. I don't know. That is a question of fact.

Q. (By Senator Thompson.) And wasn't there running at the time in the daily papers advertisements by the traction interests of willingness to use its own money to get public opinion to allow the traction law to be so amended? A. I don't know.

Q. Were not the negotiations between yourself and Mr. Shonts at that time based upon the expectation your firm was to be the fiscal agent through which such projects were to be financed? A. That has been already answered.

Q. Is it not a fact that these advertisements were designed to create a public opinion that would support the changing of the law, at the same time lending credence to the theory of the city's lack of resources? A. I don't know anything about those advertisements. I don't know who put them in.

Q. Should not you, as one of the world's greatest financiers, have known that the story of the debt limit was untrue?

(Laughter.)

Mr. Lindabury.— I think you ought to insist on an answer to that. A. That is a very funny question, and all I can say is that if the city authorities couldn't tell I don't know how I could.

Mr. Moss.— You have sold about five hundred million in the last few years, haven't you? A. We have sold a great many.

Mr. Moss.— About that? A. The debt limit was fixed and would cover all the city bonds that we sold.

Q. (By Senator Thompson.) Mayor McClellan's message in 1907 had shown 78 millions and the tax values of 1908 had in-



creased this about 50 million dollars, and whatever sums may have been charged off before the Tracy report, which came in while this private capital law was still pending, showed 106 millions available, with the tax value of 50 millions for that year, 1909, still to be added,— then why was this private capital law proposed at all? And what was the necessity for the constitutional amendment? Did not Mr. Shonts, in his talks with you, disclose a purpose under the private capital law to first secure the great trunk lines under that law, using the constitutional amendment as a means of making the public believe there were no funds? And when Mr. Shonts and his friends had secured the trunk lines two years later when the amendment would have passed, the city would then have ample funds to build feeders for its systems in the suburbs? Is it not a fact, Mr. Morgan, that Mr. Shonts' talks with you disclosed such a purpose? A. Who proposed the private capital law?

Senator Thompson.— I thought I was going to ask you questions. A. I don't know. Who proposed the private capital law?

Senator Lawson.— You didn't investigate it? A. No.

Q. (By Senator Thompson.) The private capital law was passed and signed by Governor Hughes some time in May 1909, and on October 20th private capital bids were received for the private construction of a trunk line—the Tri-Borough route. As this was to be financed through the Morgan house,—and your correspondence showed that Mr. Shonts was expecting assistance through your house,—is it not a fact that bids thereunder were not made because of the late discovery the enacting clause of the law of 1894 had not been repealed, and this expressly forbid the use of private capital? A. I don't know.

Q. I mean whatever interest it was inspiring the changing of the law seems to have slipped a cog and neglected to repeal that provision? A. I don't know whether that was so or not.

Q. Do you not believe, Mr. Morgan, it was the intention of Mr. Shonts and his associates to carry out in good faith their scheme of investment in trunk lines as their advertisements in the early part of the year had indicated and which you were expected to

finance? A. Yes, I believe that any statement that they made was made in good faith. I think so.

Q. Can any reason be suggested as to why no bid was filed on the Tri-Borough route for private construction other than that whoever inspired this changed law had made an oversight in not repealing the enacting clause of 1894? A. I thing so.

Q. When the bids for construction alone on the same system were submitted, are you aware of any influence that was used to prevent their prompt award by the Public Service Commission? A. I am not.

Q. Did you know that Comptroller Metz in his report to Mr. Gaynor just before Gaynor's taking office, showed city resources at the time of 60 million dollars? That this is a matter of record? A. I don't know whether I knew it or not.

Q. And the tax values of that year, 1910, in addition to those 60 millions of dollars of borrowing capacity provided 89 millions more?

And did you know that the constitutional amendment passed at this same election made available over 125 millions still in addition? A. Those things are all matters of record. What are the questions leading up to, Mr. Chairman?

Senator Thompson.—Here it is. Then, as a financier, can you explain how it could be possible that city officials, even in the face of this showing, raised the cry of the debt limit to find plausible reason as to why the city should not immediately proceed with the contracts for construction alone? A. I think you have asked that question and I don't know.

Mr. Moss.—I have asked the meat of that question.

Q. (By Senator Thompson.) Did you ever meet Mr. Mitchel? Mr. Prendergast? Mr. McAneny? A. Lots of times. Yes, later.

Q. Do you know that, notwithstanding the constitutional amendment providing over 125 millions had passed, the new administration was in office but a few days when Mr. McAneny discovered a "definite lack" of funds, and the Board of Estimate was actually appointed a committee whose business it was first of all to consider "whether the new lines should be built entirely by private capital," and the city poverty cry raised by Mr. Mitchel,

Mr. Prendergast and Mr. McAneny? A. That is all a matter of record.

Q. Your father is reported to have acquired the stock of the Equitable from Thomas F. Ryan on December 2, 1909. Was there any financial or business rivalry or antagonism between Mr. Ryan and your father? A. The Equitable stock was held by Mr. Ryan as trustee. Justice is now the sole survivor of that first lot of trustees. Grover Cleveland was one of them and I forget who the other was. There were several any how.

Mr. Moss.—You bought from Ryan, the stock from Ryan? Or your people did? A. Father bought the stock from Ryan.

Mr. Moss.—For how much? It is a matter of record. A. I don't know. It is all in the Pujo Investigation, if it is. I forget how much it was.

Mr. Moss.—And that has since been sold to Dupont? A. Yes.

Mr. Moss.—For how much was that? A. Cost and interest.

Mr. Moss.—How much was that? A. I forget, three or four millions.

Q. The trustees of that institution were all friends of Mr. Ryan, and yet when the concern had passed into the hands of your father they were not changed.

Do you recall also that the President, Mr. Morton, was, as a matter of course, placed in that position by Mr. Ryan, and yet, some months later, in February 18, 1910, Mr. Morton was re-elected? A. Yes.

Q. Has the Equitable continued in the hands of Mr. Ryan's friends? A. The answers to those other questions cover that.

Q. Is it not apparent, as some of the newspapers remarked at the time, that he ate his cake and still had it, and that the story that he had been driven from the Equitable was untrue, and as an actual fact, the retaining of these officials showed an absolute harmony of interest? A. Who, Mr. Ryan? I don't think there is any question of eating up a cake or having it either.

Q. Mr. Morgan, in all the traction negotiations through which you went will you state to this Committee, from your own knowl-

edge, who appeared to be or was the principal financial power, Mr. Belmont, or Mr. Ryan? A. Neither of them.

Q. Now, Mr. Morgan, after the Public Service Commission and the Board of Estimate had held up the letting of contracts of the Tri-borough route for construction alone on bids of October 27th, 1910, the debt limit cry having been again invoked, the public was confused with stories of rivalry of interests and competition between the Brooklyn Rapid Transit and the Interborough and the McAdoo interests. Is it not known to you as an actual fact that between these there was no actual rivalry, that their interests were one and they worked in harmony, as illustrated perhaps best in the holdings of Mr. Walter G. Oakman? A. I don't know a thing about that.

Q. (By Mr. Moss.) Now, this stock that you sold to Dupont was at fifty-one par value, wasn't it? A. I think so.

Q. And that carries seven per cent. on its par value? A. Yes.

Mr. Morgan.—I am much obliged for getting me through this afternoon.

Senator Thompson.—'This Committee will adjourn now to convene again to-morrow morning at 11 o'clock at the Common Council Chamber in the City of Lockport, New York.

**JUNE 16, 1916.**

AT LOCKPORT, NEW YORK.

Appearances:

Senator George F. Thompson,

Senator Robert R. Lawson.

Frank W. Moss, Esq., chief counsel,

J. Frank Smith, Esq., associate counsel, conducting the examination.

Senator Thompson.—This Committee met at the common council chamber in the city of Lockport, pursuant to adjournment. The Committee has adjourned to the city of Lockport for the purpose of taking up questions in relation to the public utilities corporations affecting the city, complaint having been made on account of the decision of the Public Service Commission relating to your power and lighting rate here. This decision was made in the fall of 1915, on October 5th. The case was heard by Commissioner Carr. It appears now that Commissioner Carr is absent from the city, having left for Europe on or about the 10th of June. There is some error in the public mind, perhaps, about the fact that Commissioner Carr has gone to Europe. I don't want to have it stated that Commissioner Carr went to Europe because this Commission came to Lockport. Instead of the Committee having driven Commissioner Carr to Europe, Mr. Carr has driven the Committee to Lockport.

We don't start out with the idea of criticising anyone. The fact that the rates in the city of Lockport, which has 16,000 inhabitants, have been raised \$42,000 a year, and that, after hearings lasting a few weeks, although I understand the matter was pending a year or two, it makes a very substantial increase in rates amounting to \$2.50 a person for every man, woman and child in the city of Lockport, is significant. On the face of it, it looks like very many other cases which we have investigated while in New York City. I think it is really a much more important case than that of the Kings County Lighting Company.

I will say for the record that I suggested that the Public Service Commission ought to take it up and hear it over again, because many of the people of this city think they should be heard, and thought that they had no right at the former hearing. Our time to take testimony expires on July 1st. It is a question whether or not that will come before the Public Service Commission to be heard before that time. I don't want to let the question drop. It is important.

Mr. Smith.—Mr. Chairman, while at the Public Service Commission rooms on Tuesday last a statement was made by someone that Mr. Carr was then on the ocean, and possibly that created the erroneous impression that he had recently gone. Whatever statement was made was entirely voluntary on the part of the person who issued it and must be accepted as such. That probably explains the cause of the suspicion. In this matter I have tried to preserve the fact, while it may be contrary to the impression prevailing in the community, that the investigation in relation to the Public Service Commission of the State of New York relative to matters in the Second District, and this matter in particular, has been taken up by the Committee simply because it is a matter of record largely in the memory of counsel for the Committee, and can best be used in a report to the Legislature as an illustration of public activities by the Commission or proceedings of the kind in relation to matters affecting individuals or corporations. In order to keep our record clear, I would suggest at this stage of the proceeding that whatever inquiries are made of the witnesses be made through the counsel for the Committee, except, that is, in special cases.

Mr. Thompson.—Our rule in New York has been that that was the policy of the Committee, but counsel have been present in almost every case. I guess, in fact, there has never been any hearing in which there has not been counsel present for someone, sometimes from three to five lawyers for one man, and we have never refused any lawyer permission to ask questions, and we will, of course, continue to extend that courtesy here. I don't want the

lawyers or anybody interested to feel that they are not welcome here and can't sit right up around the table and work this thing out. We want you to sit right up here, and let us see if we can't work this thing out. We have complained of the Public Service Commission a whole lot, and because a case before them would be pending anywhere we have most of us had the impression that the Public Service Commission acted very slow; but this Commission seems to have acted quickly enough here, apparently. We will go into it and see what there is about it. We want to hear the consumers and we want to hear the company, and want to hear all there is about it. On the face of it it looks wrong to me to raise the rate \$42,000 in a city of 16,000 people. I may be all wrong about that statement, of course, but what we want to do and what we are here for is to attempt to find that out.

Mr. Smith.—My only request was on the proposition that witnesses coming here would feel that they were not likely to be hampered in any way, that they were perfectly free to come.

Mr. Thompson.—They ought to come here. We want them here. We want the people who feel the rate is unjust to come here and say so. If they don't come we can only feel that they are satisfied with the situation. I think the power users ought to be notified of this opportunity, so that all who want to may come here now.

Mr. Smith.—For the purpose of the record, in outlining the fundamentals of the case before us,—for the purpose of informing the Committee, I will quote from the opinion of the Public Service Commission of the Second District, in the Matter of the Application of the Lockport Light, Heat & Power Company, the Lockport Gas & Electric Light Company, and the Economy Light, Fuel & Power Company, decided October 31, 1907:

“The Lockport Light, Heat & Power Company is a newly organized corporation, formed for the purpose of taking over the property and franchises of the Lockport Gas & Electric Light Company and the Economy Light, Fuel & Power Company. The four proceedings above named were

instituted for the purpose of carrying out this purpose, and were heard together. The Lockport Gas & Electric Light Company is a corporation with an outstanding capital stock of \$150,000 and \$300,000 of outstanding bonds. The company is engaged in furnishing gas and electric light to the municipality and to citizens in the city of Lockport, N. Y., and in 1906, as hereinafter stated, installed a small plant for the furnishing of steam heat to customers from a central heating station. The Economy Light, Fuel & Power Company is a corporation having a capital stock of \$250,000. For many years the business of this company, and the American District Steam Company, its predecessor, has been to supply steam heat to the citizens of Lockport from a central heating station, and in 1906 there was added to the former business the business of selling electric light and power. It has no outstanding bonds.

The petitioner, the Lockport Light, Heat & Power Company, desires to take over the property, franchises and business of these two companies and carry on the business of supplying gas, electric light and power, and steam heat, in Lockport through the agency of a single corporation. The capital stock of the new corporation, as proposed by the petitioner, the Lockport Light, Heat & Power Company, is to be \$600,000, and the company also asks leave to issue \$600,000 of bonds, making the total proposed capitalization of the new company \$1,200,000. The total capitalization of the two old companies whose properties and franchises are to be taken over is, as appears from figures given above, \$700,000."

(Opinion marked Ex. 1.)

The fact is that the permission to transfer the properties and franchises to the new company was granted; and its capitalization was \$700,000 at the time of this decision.

(Report of properties of Economy Light, Fuel & Power Co. and Lockport G. & El. L. Co., dated July 22, 1907, marked Ex. 2.)



That practically outlines how the Lockport Light, Heat & Power Company came into existence. At the time the permission was granted to this new corporation to do business and take over the old companies, a schedule of rates was established, with the understanding on the part of the company, and included in its petition, that these rates would not be exceeded or increased at any time without the permission of the Public Service Commission; and that argument was used at the time as a reason why there was no necessity of competing operation in the city of Lockport. Those rates continued until the month of October, 1915. The cause of the change then made originated first in a resolution passed by the common council of the city of Lockport, New York, on June 30, 1913, introduced by Alderman Sharp, in the following words:

“Whereas, The Lockport Light, Heat & Power Company have petitioned the Public Service Commission of the Second District, State of New York, for a hearing regarding the future prices of light, heat and power within the city of Lockport,

Therefore, be it Resolved, That the city clerk be, and is hereby directed to apply to the Public Service Commission of the Second District for a hearing to be held in the city of Lockport at a date as nearly as can be granted by the Public Service Commission, said hearing to be held at the City Hall, permission to use the same being hereby granted. At which hearing the city shall present its reasons and proof whereby it shall be granted a rate for the future for street lighting of less than one-half the present rate and a substantial reduction in the rate for house, stove and factory lighting, also for heat and power. As the street lighting contract expires in September, it is earnestly requested that the Commission fix an early date for the hearing. It is further resolved that a copy of this resolution be forwarded to the Public Service Commission, also one to the Lockport Light, Heat & Power Company and that the clerk be and is hereby directed to keep and present to the council a copy of all correspondence passing between

the city and the Public Service Commission together with the replies thereto.

Seconded by Alderman Doyle and adopted. Ayes — 10."

Also the Public Service Commissions records contain, under the title "Memorandum for Commissioner Decker," the following:

"Complaint of Common Council, City of Lockport, being a resolution adopted June 30, 1913, as to rates of the Lockport Light, Heat & Power Company:

Albany, June 8, 1913.

This resolution states that this company has petitioned this Commission 'for a hearing regarding the future prices for light, heat and power within the city of Lockport.' No such petition has been received by this Commission. As bearing on this question a copy of an opinion of the Commission in case 74 is herewith furnished and your attention is called to page 12. I suppose that it was stated in the Lockport newspapers that the company was going to apply here for permission to increase its rates but no such petition has been received and nothing has been received in the Tariff Bureau.

E. C. McENTEE.

ECMcE—NW."

Mr. Thompson.—Is that letter from some official?

Mr. Smith.—It is in the files for the purpose of a memoranda to Commissioner Decker. It is dated June 8th, but that is a mistake; it should be July 8th.

Mr. Thompson.—What year?

Mr. Smith.—1913. And that is followed by this letter:

"July 9th, 1913.

Mr. Schuyler Beattie,  
City Clerk,  
Lockport, N. Y.

Dear Sir:

The certified copy of a resolution of the Common Council of the City of Lockport asking for a hearing upon a petition

of the Lockport Light, Heat & Power Company respecting future prices for light, heat and power within the City of Lockport is received. The Commission, however, has not yet received the petition to which the resolution refers.

When such petition is received, the matter of hearing will have attention.

Yours respectfully,

.....

Chairman.

JJF—BH ”

And attached to the Public Service Commission records is a note signed by M. S. Decker, dated September 30th, 1913, relating to the city's application and the correspondence back and forth. This note reads, "The attached papers are held for the purpose of awaiting a ruling on the future rates." And that notation is signed "M. S. Decker, Sep. 30, 1913."

Mr. Thompson.— Commissioner Decker was a member of the Public Service Commission.

Mr. Smith.— And after he went off the Public Service Commission, he accepted a retainer for this company.

Mr. Thompson.— The Commissioner Decker mentioned in this proceeding which is now before this Committee was chairman of the Commission and listened, as Commissioner, to the testimony of the witnesses of the Lockport Light, Heat & Power Company in 1914. He subsequently sat at the table with Attorneys Olney and Storrs, or at least with Mr. Storrs, representing the Lockport Light, Heat & Power Company, and cross-examined the only city witness, in the same proceeding.

Mr. Moss.— A question of professional ethics, I think, which ought to be taken up.

Mr. Smith.— It probably will be.

Mr. Thompson.— Is there a Bar Association in the city of Lockport that ever does anything? We have been in New York City for several months, and any Bar Association there may be

there is evidently dormant. I was wondering if there were a live association in Lockport.

Mr. Smith.— Mr. Chairman, dormancy at least presupposes existence, or former existence.

Mr. Hickey.— If the Commissioner had attended some of the annual sessions of the Bar Association here he would know to what extent it is really alive.

Mr. Smith.— I also read from the Public Service Commission record in this proceeding, a letter entitled “ Lockport Light, Heat and Power Company,” as follows:

“ Lockport, New York, August 25, 1913.

Hon. Devoe P. Hodson,  
Commissioner of Public Service Commission, 2nd Dept.,  
Albany, New York,

Dear Sir:

In accordance with your suggestion I herewith wish to confirm request which I made on Saturday, August 23rd.

After conference with you and our Mr. Clarke in Albany in June, we proceeded to prepare petition for revision of the Lockport electric rates on the lines as outlined by you. The company's balance sheet has been approved by the chief of the Capitalization Department, Mr. Hopson. The Fixed Capital as shown by this balance sheet has been allocated to the various accounts as prescribed in the standard system of accounting and this allocation is now in the hands of Mr. Hopson.

In discussing matters since the June conference with our attorney, Mr. Beekman, he suggested an informal meeting with you or the chairman, Mr. Decker. At such conference, we would like to show the reasons and necessity for revision, and discuss such matters as valuation to be used in making of rate, depreciation, and form of rate, etc. We would like very much to have some one designated like Mr. Cheney or Mr. Hopson to assist us in working out the rate. We feel that such method would expedite matters considerably.

If this course meets with your approval, kindly advise us when such conference can be had.

Yours very truly,

LOCKPORT LIGHT, HEAT & POWER COMPANY,

C. M. Kaltwasser,

CMK—FB.

Manager.”

That letter was written in August — August 25, 1913, and related to a conference in relation to the filing of a petition, which conference, the letter states, was had in June, 1913. There is no record that Mr. Hopson was placed at their disposal. There is no mark of Mr. Hopson's individual presence in the proceeding, but this is the answer on August 26th, 1913, to Mr. C. M. Kaltwasser:

“August 26, 1913.

Mr. C. M. Kaltwasser,

Manager, Lockport Light and Power Company,  
Lockport, N. Y.,

My Dear Sir:

Your letter of the 25th inst. anent your proceedings before the Commission concerning the rearrangement of rates was just received and I hasten to reply thereto in order that you may know that no delay is occasioned by me.

I will be very glad to have you in conference on the matter with Commissioner Decker and myself, but the former is now on a little vacation and will not return to Albany before September 10 and would therefore suggest that you await the return of Commissioner Decker after which I will communicate with you and fix on a time and place for such conference.

Very truly yours,

.....

DPH—KAR.

Commissioner.”

Apparently that is the answer of Commissioner Hodson to that request. Under date of September 24th, 1913, also in the Public Service Commission records, the following letter appears:

“September 24, 1913.

Mr. C. M. Kaltwasser,  
Lockport Light, Heat & Power Company,  
Lockport, New York,

My Dear Sir:

I received your letter of the 23rd inst. wherein you refer to our agreement to have a conference with reference to your rates, with Commissioner Decker, and I desire to say to you that I have turned the papers over to Commissioner Decker, and you will no doubt hear from him when it will be convenient for both of us to have such conference.

Very truly yours,

DPH—MS

.....  
“Commissioner.”

Under date of May 25th, 1914, the United Gas & Electric Corporation, 61 Broadway, Legal Department, G. H. Olney, addressed the following letter to the Public Service Commission at Albany, New York:

“May 25, 1914.

Public Service Commission, 2nd District,  
State of New York,  
Albany, N. Y.

Dear Sirs:

Herewith is petition for your Commission's approval of a revision of the rates of the Lockport Light, Heat & Power Company for electricity. If the petition is not in form satisfactory to the Commission, we would be glad to take up the matter of any amendment desired. If the petition is in order for consideration, we will attend before the Commission for such consideration with our engineer and manager, at such time and place as the Commission finds most convenient. We trust, however, that such consideration of the

petition may be given by the Commission with as little delay as possible. We are not unmindful of the Commission's recent ruling in the Ellicottville Company case that approval in advance by the Commission of a change of rates is not required. In the case of the Lockport Company, however, as you may observe from the Commission's opinion of October 31, 1907, appearing at pages 23 and 24 of Volume 1 of Public Service Reports for the Second District, it has been stipulated that a change of rates shall require the Commission's permission in advance.

Very respectfully yours,

Encl.

GEORGE H. OLNEY.

GHO—EM "

The matter goes along, according to the Public Service records until the 7th day of July, 1914, when, from the Public Service Commission records, I quote the following:

" City Clerk's Office,  
Lockport, New York,

7th July, 1914.

Schuyler Beattie,

City Clerk,

Thomas F. Fitzsimmons,

Deputy.

Secretary,

Public Service Commission, 2d District,

Albany, N. Y.,

Sir:

I have been directed by the Common Council to request that you furnish an Electrical Expert to assist the City in the matter of hearing to be held in this city July 23d before Commissioner Decker on the Petition of Lockport Light, Heat & Power Company for permission to revise rates for electric light and power. In the event your Commission has no expert available, a suggestion of the name or names of competent person to serve in this capacity, compensation to be taken care of by this city, will be appreciated.

As the period in which to prepare this case is short, a reply by return mail will be appreciated.

Respectfully,

SCHUYLER BEATTIE,  
City Clerk."

Mr. Thompson.— That was after the hearing in Albany?

Mr. Smith.— After the hearing in Albany. And the answer of the Commission, from the records, is as follows:

" July 9th, 1914.

Mr. Schuyler Beattie,  
City Clerk,  
Lockport, N. Y.,

Dear Sir:

Replying to your communication of the 7th inst.

It is a serious question whether the Commission should with propriety provide an electrical engineer for one side or the other in a contested rate case and as acting on behalf of such parties and there is much to be said against such action. Nevertheless, and without reference to that question, the Commission has no expert in its employ whose time it can devote to such service in this case or any other like proceeding, nor has the Commission funds at its disposal with which to employ such an expert.

The Commission can not properly suggest the name of competent engineers from whom the city might make a selection. There are quite a number of those engineers who have appeared before the Commission in various cases and for it to select some one or more of them out of the many electrical engineers who would be open for this employment would not be appropriate for the Commission to do to say the least.

I regret exceedingly that the Commission can not undertake to advise the city in this matter, but it suggested that a short inquiry among the profession will enable the city to make a prompt selection.

Very respectfully,

.....

JJF—BH

Commissioner."



Mr. Smith.— I don't know who that is. (Turning to Deputy City Clerk Thomas F. Fitzsimmons.) Mr. Fitzsimmons, have you the record of that original letter?

Mr. Thompson.— Give him the date of it.

Mr. Smith.— July 9th, 1914. And I read the following from the record of the Public Service Commission in the same proceeding:

“ The United Gas and Electric Corporation,  
Sixty-one Broadway, New York,

July 13, 1914.

Hon. Martin S. Decker, Esq.,  
Public Service Commission,  
2nd District,  
Albany, N. Y.,

Received  
July 14,  
1914.

Dear Mr. Decker:

I regret some delay on the question of giving access to our books to the city of Lockport raised at the hearing of the 1st, but assure you as I have the City Attorney that the time has been occupied in a most earnest effort to furnish him what he desires without unfairness to the Company, and I have written him that I will see that by adjournment or otherwise the delay places him under no disadvantage in preparing his case.

It is not unusual that a hostile attitude exists in a locality with respect to its public utilities, especially as an ever-popular subject of agitation for political purposes. It is unusual, however, that it exists under conditions of such extreme bitterness as prevails in Lockport, apparently because of numerous matters of long standing, which are wholly matters of inheritance so far as the interests now in control are concerned.”

But the fact is that the interests are identical, so far as the stockholding proposition is concerned.

Mr. Thompson.— Interests in control of what?

Mr. Smith.— The Gas Company.

Mr. Thompson.— Who is that letter from ?

Mr. Smith.— George H. Olney.

It goes on:

“ It would not be fair to burden you with an explanation of these matters and it may be sufficient to say merely that we have reason to believe that while full access given to our books, if fairly exercised, could not impair our clear right to an increased revenue, it could hardly fail to mean endless future persecution through a distorted use of facts purporting to be justified by actual records.

We do not impugn the motives of the City Attorney and believe he would have no purposes beyond those he is bound to have as the City's representative in the present proceedings, but we do feel strongly that complete access to our records would be made the means of collecting isolated and misleading data from correspondence and other records upon matters of a confidential nature having no bearing on the only issues raised by our application. In fairness to others as well as ourselves, we feel that we should not open our books for an examination which might plainly be conducted out of curiosity or malice.

We offered, as you know, to produce all our records before the Commission or to allow full access to the Commission's examiners and engineers for as much inspection as it would wish to make. We even stated that we would bear the expense of such an examination for the City's benefit. We also offered to furnish sworn extracts from the books upon every detail desired by the City Attorney which had any bearing upon facts relied upon in our complaint, or could be properly brought into issue under the complaint. Further than this our executive officers, after conscientious consideration of the rights of the City and of ourselves and of others, feel that we should not be called upon to go, and upon a careful study of the Public Service Act and of the decisions and practice under the Act as well as the acts of other States, I am bound to advise them that no inspection of the records

seems to be contemplated either by the letter or the spirit of the Act, except by the Commission itself, in fact that the chief purpose of an inspection by the Commission was very evidently the avoiding of an inspection by an adverse party, whether the City or individual complainants. So far as I can discover the Commission has always met a similar condition by an examination of its own.

In the strong desire we have to meet your wish to avoid the necessity of a tedious detailed examination of the records in open hearings, we suggest that our books be opened to some firm of certified accountants designated by the Commission or selected by the City from a list of accountants submitted by us for full examination, at the expense of the City, as to any data having any bearing upon matters involved in our complaint such as the cost of production, receipts for past service and valuation. As to valuation, however, we still feel that when an examination of firm records and consultations with your engineers you come to understand how completely the valuation assumed by us in the calculations of the complaint represents the valuation verified and ordered by the Commission, you will agree that such valuation should be assumed on all sides. The data then needed would be very simple, as there would be but little in question except the accuracy of the calculations upon the cost and receipts under the proposed new rates all being supposititious figures as to which our engineers must of course expect to be examined and corrected if shown by the Commission or the City to be mistaken.

Certainly upon so vital a matter and one which seems to involve a departure from usual practice as far as I can learn, we would, before making final decision, request without intending any disrespect to your view that we have the views of the entire Commission upon this feature of the case which undoubtedly will in any event reach the entire Commission at some later stage for general decision. If you desire we will take the matter up with you in Albany, and we feel the examination we suggest would go a long way in the direction of the confidence you expressed that once the parties could agree

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upon the facts there might be some way of working out an agreement as to what the rates should be.

Very truly yours,  
GEORGE H. OLNEY."

This was pending the inquiry. And on July 15th, 1914, the following reply was made:

" July 15, 1914.

Mr. G. H. Olney,  
Vice Pres. & Gen. Sol., The United Gas & Elec. Corp.,  
61 Broadway, New York City,

Dear Sir:

I have read attentively your letter of the 13th inst. in relation to the Lockport case. I think you very greatly over-estimate the likelihood of any embarrassment to your company through permitting the engineer or accounting expert of the city of Lockport to examine its books. You will remember that your company has put in evidence a mass of computations. In connection with them it proposes to introduce testimony and documentary evidence concerning the value of the property. It is very evident that the city can not combat the figures involved in this proof unless it has access to the source from which the figures were obtained. It is also evident that counsel for the city is utterly unable to cross-examine your witnesses without having a clear knowledge of such sources through the proposed examination, the only alternative being to bring the books, papers and documents themselves upon the table at the hearing and require your witnesses to produce the book entries, the vouchers and all other records which constitute the basis of the testimony presented by your company.

The examination by the engineer and accountant who may be employed by the city will be confined, of course, to the matters I have above mentioned. If the city desires to put in other proof which is solely in possession of your company it may do so either by subpoenaing officers of the company and requiring them to produce books and papers or it may

ask the Commission to order your company to prepare and produce statements containing the desired information as compiled from the books and records of the company.

The sole point reached by my suggestion at the close of the hearing is that the city engineer or accountant should have access to the sources from which the proof introduced by you at the hearing and to be produced at the next hearing was obtained or compiled. The suggestion did not go beyond that. Your company, of course, will have the right to refuse access to information outside of these matters and proof as to other matters could be required by the city only in the manner above suggested.

Let me add that if the city insisted upon its right to cross-examine your witnesses with reference to the proof introduced or to be introduced and to have the books produced for that purpose in the event that your company refused to give their engineer or accountant access to the sources of such proof, the books and other records thereby involved will have to be produced at a hearing, and that hearing must necessarily from the exigencies of the situation be held in Albany and the time involved would depend only upon the length of the examination.

For the reasons above stated, I again recommend to you to come to some arrangement with the corporation counsel with reference to permitting such examination as I have above outlined.

Very respectfully,

MSD—BH”

COMMISSIONER.

The same Public Service Commission records contain the following under date of October 9th, 1914:

“The United Gas and Electric Corporation,  
Sixty-one Broadway, New York.

October 9, 1914.

Mr. Martin S. Decker, Commissioner, Public Service Commission, Second Dist., Albany, New York:

Dear Sir:

Your favor of the 7th inst. addressed to Mr. Geo. H. Ol-

ney, our Counsellor, re Lockport Light, Heat & Power Company matter, was duly received.

Mr. Olney is out of the city for a short time, but I beg to advise that Mr. William McClellan, Engineer for the municipality of Lockport, has had several conferences with our representatives in connection with the securing of certain information which he desired covering the operations of the Lockport Company, and we are now having our Lockport Manager prepare certain statements, as requested by Mr. McClellan.

I take it that until Mr. McClellan has completed his investigations and in turn has advised with the representatives of the municipality of Lockport, that it would not be opportune to fix a date for the next hearing.

We shall be glad, therefore, to await your pleasure with respect to the dates of further hearings that may be held.

Yours respectfully,

GEO. B. TRIPP,

Operating Executive.

GBT—GD.”

I simply read that to show the method of procedure of the city expert in obtaining the information which he did obtain.

Mr. Thompson.— He talked it over with Olney?

Mr. Smith.— He had several talks. And the minutes of the Public Service Commission show that there was a hearing in this matter on the 1st day of July, 1914, at 2.30 p. m.

PRESENT:

Martin S. Decker, Commissioner.

Appearances:

George H. Olney, 61 Broadway, for applicant,

Mortimer S. Federspiel, for the Common Council and Mayor of the city of Lockport,

J. H. Perkins, Gas Company expert, and

C. M. Kaltwasser, of the Gas Company.

Mr. Thompson.— That hearing was adjourned to when?

Mr. Smith.—The same Public Service Commission minutes show that several adjournments were had; and that at an adjourned hearing held at the County Court room in the County Court House on July 12, 1915, starting at 10.50 a. m., there was present James O. Carr, Public Service Commissioner, and the appearances were Messrs. Storrs & Storrs, by William W. Storrs, 60-63 Savings Bank building, Lockport, for the Gas Company; Martin S. Decker, Albany, N. Y.; George H. Olney, New York City, for the applicant; Roy H. Ernest, corporation counsel, for the city of Lockport; the only witnesses examined were J. H. Perkins, Gas Company expert, and William McClellan, for the city of Lockport, an expert. Mr. Decker, at page 212 of these minutes, makes comments on the examination, and Mr. Olney continues the examination. The testimony shows that he takes an active part in the proceeding in which previously he had sat as a commissioner.

Mr. Thompson.—That is a criminal offense when the district attorney does it. He is precluded from doing it under the law. He can't leave the bench and appear as attorney in a case that was indicted before him.

Mr. Smith.—I offer in evidence the order of the Public Service Commission, dated the 5th day of October, 1915, showing the new rates for electric light service for various uses.

Mr. Thompson.—I want the opinion on which the order was entered.

Mr. Smith.—It is in the record.

Mr. Thompson.—This petition was filed in 1914, I understand. While the proceeding was started in the year 1914, by petition filed May 27th, at the time of the institution of the proceeding, the annual report of the Lockport Light, Heat & Power Company for the year 1913 must have been filed. Yet, this opinion bases its figures on the report of 1912, and ignores the report of 1913, which was made before the proceeding was begun, and ignores the report of 1914, which was filed before this opinion was written.

Mr. Smith.—That is correct.

Mr. Thompson.—And they take the gross income as shown by the report of the company for 1912, \$10,971.16. You can compare the reports of 1913 and 1914 with that.

Mr. Smith.—The reason is this, that while the petition was submitted in 1914, the company's engineers, and possibly some of the Public Service Commission's engineers, had been working on the proposition since early in 1913, and they used that 1912 report for the basis of their report, and continued under that 1912 report; but that would not affect the situation that the condition might have changed during those years. And everybody seemed to agree with the engineer's opinion that wherever he commenced everybody else must start.

Mr. Thompson.—The opinion seems to base the decision in great measure, perhaps fully, because it is the final clause of the opinion, upon an agreement of the engineers of both parties. I don't understand how they got that at all, except that they might have arranged the rule; for, as I understand it, the Public Service Commission should take the people's side and inquire into it, especially in rate cases. I always understood that the Public Service Law was intended to create a commission which should, on behalf of the people, ascertain the facts and protect the people. This opinion seems to be based on the opinion of the court that that is their duty. They base their opinion on the latest fact that the engineers of both parties have greed upon together. You might inquire of the city as to whether or not the city has done anything about that.

Mr. Smith.—I want to introduce right here that the important point to my mind, at this stage, lies in the fact that there is no justification for establishing a rate and that it be based on the 1912 condition, unless the condition is shown to be the same in 1915.

Mr. Thompson.—Was the rate retroactive?

Mr. Moss.—It would not seem equitable to me, creating a rate on a 1912 report, to affect a 1915 condition. That's just about as raw as some other things we have been looking into.



Mr. Thompson.—For the benefit of my colleagues from New York City, I will say that in the city we have been in the habit of running till one o'clock and then adjourning till half-past two or three; but we realize that we probably can't get anything to eat in the country after two o'clock, so I think we better adjourn now till two o'clock. And all witnesses are requested to appear here again at two o'clock this afternoon.

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TWO P. M., FRIDAY, JUNE 16, 1916.

Hearing continued pursuant to adjournment.

Mr. Smith.—I want it to appear that Commissioner Decker, at a hearing held on the 12th day of July, 1915, at the city of Lockport, took so active a part in the proceeding that he conducted a cross-examination of Mr. William McClellan, the expert hired by the city of Lockport, covering a number of pages from 193 to 206 of the typewritten record which is a part of the record of the Public Service Commission. I will call Mr. Dickenson.

WILLIAM A. DICKENSON, being duly sworn, testified as follows:

(Examination of Mr. Dickenson suspended to permit of calling Mr. Federspiel.)

MORTIMER A. FEDERSPIEL, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport? A. I am.

Q. A lawyer by profession? A. I am.

Q. Been practicing how long? A. Been practicing since 1897.

Q. What is your address? A. Ninety-one Main street.

Q. Did you hold an official position, that of city attorney, at any time? A. In 1913-14 I was city attorney.

Q. It was during the year 1913, and during your administration, while you were city attorney, that the resolution introduced this morning was passed? A. It was.

Q. Have you, as city attorney, any knowledge as to where the information came from that caused the passage of that resolution?

A. There was a rumor about the city that reached the common council that the Light, Heat & Power Company intended making an application relative to their rights to increase their rates.

Q. There was some correspondence about that? A. Yes, there was.

Q. Subsequent to May 25, 1914, application was made by the Lockport Light, Heat & Power Company for revision of its rates?

A. There was.

Q. There was correspondence that passed between the city and the Public Service Commission in relation thereto? A. There was.

Q. Including the application made by the city of Lockport that the Commission indicate an expert to go over the matter on the part of the city? A. That came up in the hearing at Albany.

Q. On July 1st? A. On July 1, 1914.

Q. That necessitated an examination of the books of the company on the question of rates? A. It did.

Q. Application was made to the Commission for them to designate an expert? A. Yes; by the city.

Q. That application was refused, as indicated by the letter read? A. It was.

Q. The question then came up as to obtaining official expert assistance? A. It did.

Q. Where was that discussed first by you as city attorney? A. In some of the committees of the common council; I think in the committee on finance.

Q. To whom was the matter left to obtain such assistance? A. They directed me to look into the matter and see whom we could obtain and what the expense would be. At the time of the hearing at Albany I talked the matter over with one of the clerks there in the office and he suggested several names.

By Mr. Lawson:

Q. Do you know his name? A. It has slipped my mind just now.

By Mr. Smith:

Q. What was the talk? Tell us what was said. A. He suggested several names of persons whom we might secure. I asked him if he knew any experts not connected with the lighting companies and the heating companies. He suggested several names, and one was William McClellan, of New York City. I obtained other names in Buffalo and elsewhere. We picked out the most available names, and I corresponded with, I think, about five. They were all busy except Mr. McClellan, busy with similar engagements, and could not take the matter up. Mr. McClellan and Mr. Perkins of Buffalo were at Lockport. Alderman Upson and I went to see Perkins and we decided he was not the man we wanted, and a committee of the common council directed me to take the matter up with Mr. McClellan, and I did. I wrote to him and went to New York to see him in July, 1914, and saw him in regard to the matter.

Q. The letter signed by the city clerk, in which application is made to the Public Service commission, is dated the 7th of July, 1914, and in that letter request is made to furnish an expert. Do you know whether you had any communication with the city officers between the 1st and 7th of July as to what you had heard at Albany? A. Upon my return from Albany I told the Committee what I had heard at Albany, and that it would be necessary for them to have an expert, and it was after that that I wrote the letter.

Q. I show you a copy of a letter attached to the report of Mr. McClellan. Do you recognize that as a copy of the letter which you sent? It was attached to his report. (Letter shown to witness by Mr. Smith.) A. That is a copy of the letter which I wrote and sent to Mr. McClellan.

Q. Did you have any talk, prior to Mr. McClellan commencing operations as city expert, as to the particular class of duties he was to perform? A. I did.

Q. What was it? A. I told him I was convinced the rates were high, and there should be a revision, and that it would be necessary to make a complete appraisal and inventory of all of the physical properties of the company, and that the committee of the common council had decided that was the best thing to do,

and that if he took up the matter we wanted him to make a complete inventory of the company.

Q. Was he solicited at that time to make any adjustment of rates? A. He was only to value the properties of the company, to take means to find out their actual investment here. They insisted that their investment was over a million dollars and they were not receiving income on that investment.

Q. The city criticism was on the basis of the amount of rates which they claimed as a result of the capital invested? A. Yes; on the capital invested.

Q. When did he go to work, as you recollect? A. About the middle of July, 1914. I think I was in New York about the 14th of July, and I came back and reported to the common council and the council authorized his employment. That letter shows that authorization.

Q. How long did he continue on that work? A. Was still working when I went out of office on January 1st, 1915.

Q. On this application there was a hearing at Albany while you was corporation counsel? A. Yes.

Q. Any witnesses sworn? A. Two.

Q. Who is this Mr. Perkins? A. An engineer of the company.

Q. Is he the Mr. Perkins who is here now? A. No.

Q. The local superintendent or manager was sworn? A. Yes.

Q. Those were the only two witnesses sworn at any hearing? A. Yes.

Q. The hearing at Albany was the only hearing had? A. That and its adjournments.

Q. During the time that you was corporation counsel, did you receive any report from Mr. McClellan as to what he had done, or how far along he had gotten in his work? A. None. I may have received brief letters stating simply that we was working and was progressing.

Q. In connection with your correspondence with Mr. McClellan in regard to his hiring, did he at any time indicate to you what his previous employment had been? A. I asked him what his previous employment had been and he told me he had been employed by the Public Service Commission and was then engaged in valuing properties of some big telephone company

for the Public Service Commission. I asked him if he was associated in any way with the Lockport Light, Heat & Power Company or any of its associate companies, and he said he was not.

Q. Did any letter ever indicate any connection that he might have had with the Lockport Light, Heat & Power Company, or any of its predecessors? A. I think one of his letters stated that he had previously allocated the properties of the company on previous hearing.

Q. I show you a letter dated July 9th, 1914. (Letter shown to witness.) What does that letter say in regard to the matter about which I am questioning?

A. "You may not know that on one time, I made, for the Public Service Commission, when I was their chief of the division of Light, Heat & Power, a careful examination of the Lockport Company's properties. If I remember correctly the Commission, after an examination of their accounts and property, came to some conclusion as to what should be put into their property accounts. If this be true, a complete inventory and valuation would not be necessary. If, on the other hand, a preliminary investigation would show that a complete inventory and examination was necessary, considerably more time and expense would be involved."

Q. That letter is dated July 9th, 1914? A. It is.

Q. Addressed to you as city attorney? A. It is.

Q. Signed by William McClellan, who subsequently became the expert? A. It is.

Q. Have you sufficient knowledge, Mr. Federspiel, of the facts connected with your administration in relation to this particular matter, to be able to answer as to whether or not, during your administration, there was any authority given to expert McClellan to act as agent of the city of Lockport in adjustment of rate matters? A. Never given such authority while I was corporation counsel.

Q. Are you connected with any other business than that of practicing law, or have you been during the past two years? A. Yes, with the Lockport Ice & Cold Storage Company.

Q. Located where? A. Corner of Market and Union streets.

Q. Is that a user of electric current? A. It is.

Q. Did the matter of cost of electric current come within your personal knowledge? A. Yes.

Q. To the entire extent, so that you had full knowledge of the facts in relation to those things? A. It did.

Q. Have you in your possession at this time any bills showing the cost after readjustment of rates on October 15th, 1915? A. I have.

Q. Will you produce them? A. I have a memorandum here.

Q. That is sufficient if it covers the facts. Is it in relation to your bills? A. It is.

Q. You will produce these bills before the Committee? A. I will.

Q. What was the character of power originally used? A. We used sixty-cycle.

Q. What character of power? A. We originally used steam power up to 1907.

Q. Through what company did you make the change? A. Economy Light, Fuel & Power Company.

Q. Formerly the American District Steam Company? A. Yes.

Q. You did install motors and other apparatus necessary to use that power? A. We did.

Q. And what power did you use? A. Sixty-cycle.

Q. What voltage? A. Approximately 2,300 volts.

Q. What price did you pay? A. Twenty-two dollars per horse-power.

Q. For what use? A. Twenty-four hours a day, 365 days a year.

Q. How long did they deliver power under that contract? A. From October 1907 to 1912.

Q. The Economy Company? A. The Economy Company down to January 1st, 1908, when they were succeeded by the Lockport Light, Heat & Power Company.

Q. How long did they? A. From that time to October of 1912; and then till about the first of April, 1913.

Q. Somewhat beyond the time of the contract? A. Yes; nearly six months.

Q. Prior to the expiration of the contract did you have any conversation as to its renewal? A. I did, with Mr. Kaltwasser.

Q. How long before the expiration was that conversation? A. I had the first one in 1912; along in July or August of 1912.

Q. Did he raise any question about the financial ability of his company to renew it at that time? A. Not at all.

Q. When did you learn that it would not be renewed? A. Oh, several months after that; I went to them and asked them to get out a new contract and they said they would; it ran along several months; I saw them several times and they said they were going to get out the contract; he said at one time that the New York office objected to renewing the contract and hence they would not renew the contract. I told them at that time that we were legally entitled to the rate; that at the time of the consultation in 1908 it was not permitted that there should be increase of rates and that these rates were in existence at the time of the consultation in 1908 and that legally they could not increase the rates.

Q. Do you know what he meant when he spoke about the New York office? A. The head office in New York I suppose.

Q. What head office? A. The United Gas & Electric Corporation.

By Mr. Lawson:

Q. Are they the owners of this company? A. They are.

Q. It is a New York City corporation and this is a subordinate company? A. It is incorporated here but the owners are in New York.

Mr. Moss.—Are the owners connected with any other gas company?

Mr. Smith.—The capital stock comes right back to the Lockport Gas & Electric Light Company, one of the merged companies, and the corporation then bought the stock of the new concern to the extent of \$150,000 which was the amount of the stock represented by its value at the time it went into the combine.

Mr. Moss.—Since it went to New York has it gotten mixed up with any of our light companies?

Mr. Smith.—It must have. This corporation went to New York in the pocket of some other company, and ——

Mr. Moss.—Is it the United Gas Company?

Mr. Smith.—Yes, it is.

Mr. Lawson.—Of which George B. Cortelyou is president?

Mr. Smith.—I don't know as ——

Mr. Lawson (to Witness):

Q. Do you understand that it is New York City capital that controls your local Gas Company? A. I do.

Mr. Moss.—That makes it an octopus, doesn't it?

Mr. Smith (to Witness):

Q. Your contract was not renewed? A. No.

Q. What was the final reason given for not renewing it? A. That the New York office would not do it.

Q. Was that all? No explanation? A. They said they would give me a contract for power, provided I would change my machinery and went on a 12,000-volt line.

Q. What would be the expense of that change? A. About \$3,000.

Q. Did you make it? A. We are making it now.

Q. Did you try to operate under the established rates of this October 5th decision? A. We have.

Q. Was there any material difference in your charge under that decision and under the prior rate? A. There was.

Q. Can you indicate by figures? A. From November 1st to March 25th we paid, under the new rate, \$940.75. The prior year from October 27th to March 23d, which was practically the same period, we paid \$663.49. We have used, this year, about half the power we used the preceding year, when the bill was about \$300 less. The year before we had about \$35,000 worth of fruit in storage and this year we had about \$17,000; the year before we manufactured ice, but this year we have not manufactured any ice.

Q. So that the new rate put you out of the ice business? A. We had to sell out or lose money.



Q. Did you discuss with the Lockport Light, Heat & Power Company a fair return on your investment in the ice business?

A. I have.

Q. Did they recognize that you have a right to a fair return?

A. None whatever.

Q. What did they say? A. I told them they were confiscating my property; and they said they could not help that.

Q. You were familiar with the discussion and arguments at the time of the merger in 1907? A. I was.

Q. Will you state what the statements and arguments were that introduced this change? A. The companies claimed that by consolidation of the two companies they would prevent a duplication of expense in the way of office force and general running expenses, and so could furnish cheaper light and power. The city objected on the ground that there would be increase of rates and that the company would claim that it was not getting a fair return on its investment. The company insisted, however, that the rates would not be increased, and finally agreed to stipulate that the rates then existing should continue and should not be changed without the consent of the Public Service Commission. In the testimony of Mr. Bender, who testified as a representative of the Economy Light, Fuel & Power Company, he testified that they sold power for from \$18 to \$22. The Gas Company filed its stipulation, and in the opinion of the Commission it states that only those can have the power at \$20 who are on the 12,000-volt line; so that either the Gas Company or the Economy Company didn't submit a complete schedule, so as to include our rates, or else the Commission overlooked the fact that we had such rates, and limited the rates to the 12,000-volt line, and the Gas Company told us we were not on that 12,000-volt line.

Q. In your investigation you found that the city of Lockport granted a franchise on those specific conditions? A. They did. They were to furnish power to all consumers of power at \$22 per horse-power where they used 100 horse-power and at \$20 where they used 500 horse-power.

Q. And as one consumer under this new condition you have to go to an expense of practically \$8,000 to conform to the requirements of the company? A. It has cost us upwards of \$8,000.

Q. After refusal to enter into that contract did they make any variation in your rate at that time? A. Not till after the winter months were over. In the winter we use but little power because of not needing much refrigeration. So that our power bills are lighter in the winter months; so that they continued to run us on minimum basis under the old contract and then they changed over and had us on the regular meter rates.

Q. What is the variation in the figures in the words of horse-power that you had? A. The increase was from \$20 to approximately \$35, and this last increase has increased us to between \$65 and \$70 per horse-power.

Q. I will ask you did you personally, Mr. Federspiel, at any time, indicate to Mr. Expert McClellan that you would recognize his act or that he had any authority in any way to stipulate or talk rates which would be obligatory upon the city of Lockport? A. I did not.

Q. Is there any other statement that you want to make, or that you think we should have, in this matter? A. No.

ROY H. ERNEST, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a lawyer by profession, Mr. Ernest? A. I am.

Q. And reside where? A. Spruce street, in the city of Lockport.

Q. And you have occupied the official position of corporation counsel of the city of Lockport? A. Yes, since January 1st, 1915.

Q. And are now? A. Yes.

Q. You took over as one of the legacies of your administration the pending application for increase of rates? A. I did.

Q. When did you first see Mr. McClellan, the expert? A. Shortly after I received notice from the Public Service Commission that this matter would be brought up; I can't tell just what date that was; upon coming into office I received Mr. McClellan's report from Mr. Federspiel.

Q. Mr. McClellan's report was in before you took office? A. Mr. Federspiel turned his report over to me and said he had recently received it and had not given it a thorough examination.

Q. The report is dated November 19th. A. I am sure I received the report from Mr. Federspiel.

Q. (To Mr. Federspiel).—How is your recollection, Mr. Federspiel?

A. (Mr. Federspiel).—I think it came to me after my term had expired and I turned it over to Mr. Ernest.

Q. (To Mr. Federspiel).—You had no official use for it?

A. (Mr. Federspiel).—No, none.

Q. (To Witness).—Have you any idea of the date when you got hold of this report officially? A. I think it was soon after I went into office—a month or six weeks.

Q. And how long after you received the report did you get into touch with Mr. McClellan? A. Why, probably a month or two after that.

Q. And to what extent did you confer with him at that time? A. I went to New York City to confer with Mr. McClellan.

Q. Preparatory to this hearing? A. Yes; before the hearing, I went over the matter with him.

Q. As corporation counsel of the city of Lockport you had charge of the presentation of the city's case? A. Yes, on the second hearing.

Q. You had charge of the city's side of the case entirely? A. Yes, I had charge of it.

Q. Did you use Mr. McClellan as a witness on that hearing? A. I did.

Q. Did you use any other person? A. I did not.

Q. Did you submit any exhibits other than those used by Mr. McClellan? I will show you the record to refresh your recollection. A. That contract was some contract, between the Niagara, Lockport & Ontario Power Company and the Lockport Light, Heat & Power Company.

Q. It was a binding contract? A. Yes, it was in force.

Q. And also a report of Mr. McClellan, which I have? A. Yes.

Q. Those were the only exhibits? A. Yes.

Q. I assume that in the preparation, or in anticipation of that hearing, you made some preparation by examination of the reports, and so forth? A. I went over the report with him.

Q. With Mr. McClellan? A. Yes.

Q. I call your attention to the first paragraph on page 8, and read —“ Some of the property is used for both steam and electric service. It is well known that the steam plant, when originally installed, was intended to handle both services.” Did you notice that at the time? A. I did and called his attention to the fact that the steam plant had been used for steam only for years.

Q. What correction did he make in his testimony to relieve the Commission from the obligation of believing that fact? A. I don't know, I would have to look this over.

Q. Do you know that he did do that, as a matter of testimony, in any way? A. I can't remember now.

Q. Was there any correction? This being the report filed with the Commission, do you know of any correction on the record? A. Not unless it was made in the testimony.

Q. You realize that you would be bound by that, do you not, as it was introduced in evidence? A. Yes, I do, unless it was explained.

Q. Yes. And I call your attention to page 9 of the report — “The steam plant is necessary for the proper electric service in the city of Lockport.” Was your attention called to that particular statement? A. Yes, I remember of seeing it in the report. I think that was taken up in the testimony. I didn't agree with him on that but I think Mr. McClellan was interrogated on that point and —

Q. What —“the steam plant is necessary,” was that taken up? A. That was what was taken up; the Elm street steam plant.

Q. Yes, it was the Elm street steam plant; but was the particular point established other than by that abstract statement that the steam plant was at all necessary? A. I couldn't say that that was.

Q. But the particular point as to whether or not that statement was correct was not discussed? A. Probably not.

Mr. Thompson.—How do they get along at Niagara Falls without these steam plants?

Mr. Smith.—Yes, and in Buffalo, and other places.

A. They are for shortage of power, I guess.

Q. I call your attention to page 10, speaking of the necessity of the Elm street steam plant, and quote to you the following:

“The Elm Street Steam Plant is designed for this particular purpose. The efficiency of the plant as a power generating plant is not high, and is correspondingly less expensive than would be a highly efficient steam generating plant. This is as it should be. We are of the opinion, therefore, that all of the engine room equipment should be allocated to the electric department.”

A. We went over the report and I took his word for it.

Q. Did you recognize that there were engine rooms in the steam plant before there was any question of its operation for electric purposes? A. Yes.

Q. Did they appear to have been in operation before that time? A. No.

Q. Had you recognized that the Steam Company, for years prior to its operation as an electric plant, had a machine shop up here? A. They had it across the street.

Q. And operated by steam power? A. Yes, I guess so.

Q. And that in the steam power they required engines? A. Yes, I suppose they would in the plant.

Q. So there must have been engines in this plant for many years prior to 1906? A. Yes, they must have been there.

Q. Did that ever strike you, in connection with this, as to the injustice of applying that steam operation wholly to an electric service? A. I don't know as I ever thought about it.

Q. You knew at the time of this discussion that there was a plant here on the Race? A. Yes, sir.

Q. And that the Lockport Light, Heat & Power Company had some considerable contract with the Beverly interests, called the Beverly contract? A. Yes.

Q. Did you have your attention called to the Beverly contract at the time this matter was under discussion? A. I think it was spoken of in the report.

Q. Did you give it any personal examination? A. The contract itself?

Q. Yes, the Beverly contract. A. No; I don't think I saw it.

Q. And you know nothing about its terms? A. Only as stated in the report.

Q. Does the report state anywhere that the Beverly contract provided for the erection of a steam plant in connection with the water power there used? A. I don't remember about that.

Q. For the purpose of making effective the water power used at other times than when the canal is empty in the spring? A. There is no reference to that.

Q. What do you understand, Mr. Ernest, as to the continuance of water power service under this new Barge Canal, as to whether it shall suspend under the old plan or be continuous? A. I understand it is to be continuous.

Q. So that any power available under the Beverly contract will be 365-day water power? A. Yes.

Q. Did that come into the discussion, in the question of advancing the rates here, with the Barge Canal practically completed and ready to render constant service? A. I think it did come up between Mr. McClellan and myself and he said that would be all right as long as they had the Beverly contract.

Q. Did he ever tell you it was a twenty-year contract, with privilege of renewal for twenty years more? A. I don't think so.

Q. Did he ever own up to that fact himself, to your knowledge? A. No.

Q. Did you go up to the steam company with him at all? A. with Mr. McClellan?

Q. Yes. A. No, I don't think I did. This work was all done before I ever saw Mr. McClellan.

Q. Did you ever have your attention called to the provision in the report on page 11, as follows:

“ There does not seem to be any scientific or truly logical way of allocating the costs of this boiler plant between the two services. There is not sufficient data. In such cases it is necessary to compromise. We are inclined to think that the best solution is to imagine that two companies are preparing simultaneously to give the two services, and, suddenly perceiving that each one is investing his money in a separate boiler plant, decide to open negotiations by which one boiler

plant will be built, each paying half. If such a hypothesis be reasonable, and we think it is, it is proper for us, without attempting to split hairs, to regard the boiler plant as belonging to the steam plant. We shall, therefore, follow this course, and charge one-half the cost of the complete boiler plant to the steam service. This will deduct \$27,670 from the electric service."

A. He and I talked about that. I told him I didn't see why that should be so, because prior to the time that the steam plant had been used to generate electricity they had not had any auxiliary service.

Q. Did he indicate to you any reason for allocating it? A. If I remember correctly he took the position that it was necessary to have the steam plant as an auxiliary plant and it was used to keep down the peak load when they were buying the power from the Niagara, Lockport & Ontario Power Company.

Q. Did you call his attention to the fact that there was an institution down here on the Race to keep down the peak? A. Yes.

Q. What did he say about that? A. He was trying to keep down the peak, he said.

Q. That was apparently the only thing he was trying to keep down. A. That was what he told me; he was our witness and I supposed the man knew what he was talking about.

Q. What do you think about it now? A. The results are not very satisfactory.

Mr. Thompson.—Do you really think he knew what he was talking about?

A. Well, I don't know; I don't think the results are right.

Mr. Thompson.—I think he knew what he was talking about all right but don't think he told you all about it.

Mr. Smith:

Q. They also charged, or Mr. McClellan recommended the charge of \$19,056 of the operating expenses to steam generation and the electric the same way? A. Yes; half and half.

Q. Was there any comment on that? A. For the same reason that half the value was allocated in that way.

Q. On page 14 of the report, under the title, "Water Power Expenses (Race Street), \$19,110.97", there appears:

"There is no question that all this should be included. This power is paid for on the basis of rental, which includes the use of the building. It is difficult to tell whether this portion of the Company's power is being obtained as cheaply as the Niagara Power which it purchases in the form of electrical energy. Nevertheless, this Race Street water power is used and useful solely for electric service, is under contract, and there is no question, therefore, that it should be included."

That actually puts the Beverly contract in operation against the rights of the city of Lockport. Now, what was the indicated use of this Race Street power, if not to keep down the peak load? A. I think that was the only reason,—to keep down the peak load.

Q. So that when the Barge Canal comes into actual operation, so far as the continual use of water in the city of Lockport is concerned, the Race street plant will have a 365-day service with capacity to keep down the peak load to that extent? A. Yes.

Q. Do you recollect what the rate charged for the power by the Niagara, Lockport & Ontario Power Company to the Lockport Light, Heat & Power Company, under the Gas Company contract, is? A. From the Niagara, Lockport & Ontario Power Company to the Lockport Light, Heat & Power Company?

Q. Yes. A. My recollection is it was \$16 and they changed that to make it \$18, and that was one of the reasons they wanted it increased; I tried to prove that they owned the International Transmission Company also and that they could get all they wanted of power there.

Q. With a fifty-cent rebate per horsepower? A. Yes. And that was not the basis for increase in rates because they did not have to take that increase of power from the Niagara, Lockport & Ontario Power Company contract.

Q. Was your attention called to the schedule which I now show you (paper shown to witness) at any time during the pending application? A. It was not.

Q. Did you ever see it before? A. I did not.



Q. I ask you to read it for the record the comparative revenues of the Lockport Light, Heat & Power Company, based on the year ending June 30, 1914, which I show you. A. (Paper shown to witness).— Witness reads.

LOCKPORT LIGHT, HEAT & POWER COMPANY.

*Comparative Revenues, Based on Year Ended June 30, 1914.*

CLASSIFICATION.	Number of customers.	Number of K. W. hours.	Present revenue.	Proposed revenue.	Increase.	Proposed rate.
Municipal .....	1	1,387,246	28,736	28,736	.....	Present
Peak power.....	5	8,312,842	48,131	48,131	.....	Present
Residences .....	844	193,908	13,908	16,439	2,531	75-5-2
Commercial lighting.	288	410,000	25,074	32,010	6,936	10-5-2 (60-60)
Wholesale lighting...	21	134,178	7,346	4,656	de. (2,690)	McC. No. 9
Commercial power..	111	181,182	4,277	8,114	3,837	7-4-1 (40-40)
Wholesale power....	78	2,223,500	26,720	57,773	31,053	McC. No. 9
Total.....	1,348	12,846,856	154,192	195,859	41,667	.....

(Copy statement offered in evidence by Mr. Smith. Marked Committee's Exhibit No. 3.)

Q. Mr. Ernest, at any time during your employment as an official of the city of Lockport, did you directly or indirectly, indicate to Mr. McClellan in any manner that his employment extended to the province of stipulating rates to be obligatory on the city of Lockport? A. No, I never changed his employment at all.

Q. Well, specifically on that proposition; you either did or you did not, which is it? A. I think after the hearing before Commissioner Carr, Mr. McClellan said he would go over the rates; I think that was all that was said on the subject.

Q. That would be on the proposed rates, and that he should go over and make his report? A. Yes.

Q. And not on his right to establish terms obligatory on any person? A. No, sir.

Q. Are you sufficiently familiar with the administration while you were corporation counsel, to be able to state whether the

official administration of the city of Lockport ever gave him that power? A. I know they did not.

Q. I have in my hand a letter from McClellan and Champion, 141 Broadway, New York, which reads as follows:

“Sept. 22, 1915.

The Hon. Roy H. Ernest,  
Lockport, New York,

Dear Judge Ernest:

I have been giving much consideration to the very complicated question as to your electric rates in Lockport. I know you have a full realization of the difficulties which we have to meet. It is never easy to raise rates, but it is especially difficult when the rates in existence are so badly disorganized, and inequitable among themselves, as the rates in Lockport are.

I have been in consultation with the engineer of the Commission, both in New York and in Albany. The question of value, operating expenses and earnings have been combed and recombined. Altogether, some twenty or thirty different rates have been considered, including important suggestions made by the engineer of the Commission. In view of the conflicting elements involved in this settlement, it seems almost impossible to get a set of rates which may be regarded as logical among themselves and wholly satisfactory from the standpoint of scientific rate making. One can devise a half a dozen sets of rates for the various kinds of business, each set of which would give practically the same total earnings. It is only by weighing the commercial and certain local relations of these various sets of rates that a choice can be made. Under these somewhat harassing circumstances I must very frankly advise you that the enclosed set of rates will accomplish what seems to be a necessary end, and with a very reasonable distribution of the burden upon the various classes of consumers. They are, in part, rates which I have recommended and in part rates which the engineer of the Commission recommended. When I parted with him yester-

day, we were in agreement as to the greater availability of this particular set of rates.

I am not sure how the matter will come up for final adjustment, but I suppose the Commission will communicate with you. You recognize, of course, that the position of the Commission is intermediate between the Company, and the City, which is a rather difficult one to hold. To order an increase of rates in a community is not a particularly pleasant act for any commission to have to perform, and therefore there are special reasons for assuming that any rates which it orders will not be higher than what is necessary to permit it to carry out the other part of its responsibility, namely, to give the Company justice. I suggest to you, therefore, that should you be approached by the Commission in connection with these recommendations, that you promptly and freely express your willingness to accept them if ordered by the Commission and thus permit the case to be closed without further delay.

Placing myself at your disposal for any consultation on this subject which you may want, or for any other purpose in connection with the case, I remain,

Very truly yours,

.....

Enc

Wm. McC. H.

Copy to Hon. James O. Carr,

Public Service Commission,

Second District, Albany, N. Y."

Q. That is sending a personal letter, as I understand it, to the city attorney by whom he was employed and a copy to Public Service Commissioner, Mr. Carr. You received that letter did you Mr. Ernest? A. I did.

Q. And enclosed with it was a set of rates? A. Yes, sir.

Q. Mr. Thompson.—He suggested to the city attorney that he promptly and freely express his willingness to accept these rates; and he was the man employed by the city of Lockport to attempt to get a decrease in those rates.

Mr. Smith.— Yes. The Public Service Commission has a copy of that letter also.

Mr. Thompson.— Is that man a lawyer?

Mr. Smith.— I should rather think so; he is certainly not an expert.

Mr. Thompson.— If he was a lawyer, and wrote a letter like that, I would personally go to a Bar Association and try to disbar him.

Mr. Smith:

Q. Had you had the initial institution or defense of this proceeding, would you have considered yourself of sufficient ability in the electrical line so that you would not have had an expert? A. No.

Q. You would have had to have one? A. Yes.

Q. There was a list of rates enclosed? A. Yes, sir.

Q. Covering practically two whole pages? A. Yes, sir.

Q. Did you have sufficient knowledge or information of this subject to be able to determine on the justice or efficiency of those rates? A. No, sir; I did not.

Q. Did you have enough knowledge to be able to make comparison between those mentioned in the letter and those suggested by McClellan in his report? A. No.

Q. You knew practically nothing about the enclosure? A. Nothing.

Mr. Smith.— I want to call the Committee's attention at this point to the fact that the residence consumers charge, submitted by Mr. McClellan on that occasion was not asked for by the company and was not indicated by Mr. McClellan in his report.

Mr. Thompson.— You mean that 75 cents?

Mr. Smith.— I mean that 75 cents; that was not asked for by the company and was not mentioned by Mr. McClellan in his report.

Mr. Thompson.— I have made an examination of rates in the State of New York and in Canada. This is the only rate of that kind in the State of New York; there are minimum rates

everywhere, but that is not a minimum rate; it is an additional rate and there is no precedent for it.

Mr. Smith.—I wish we might have on the record, and right here I will read, Mr. McClellan's criticism on that particular rate as opposed by the company, not for its value at all, but for comparison between that and his ultimate statement:

“Rate No. 4 calls for \$1 service charge and 4 cents additional per kilowatt hour for energy. As explained above, there are three elements in the service of the company which must be paid for by the consumer. The particular form of rate is an attempt to simplify the more formidable looking three-charge rate. Frequently an attempt is made to accomplish the same end by means of a minimum bill. We believe, however, that a service and energy charge is more logical, and in the end will be found to be more attractive than the minimum bill.

An examination of the curves given in the back of this report will show that a dollar service charge is not excessive. From practical and commercial consideration, however, we think it is inadvisable to have this dollar charge. A customer using, say, 5 kilowatt hours per month would have a bill of \$1.20. In fact, there could be no bill as low as \$1 to any customer who used energy. It seems to us that this would come in conflict so much with the prevalent idea of a proper minimum bill, that it would be inadvisable for the company to attempt to operate with such a rate, even though it may be justified from the standpoint of cost of service.

The second criticism which we make of this rate is that the average rate for energy, no matter how much use a customer makes of his minimum demand, can not fall as low as 4 cents per kilowatt hour. This precludes absolutely the use of much domestic electric apparatus, except to those who are willing to pay any price for convenience. Moreover, there is no inducing feature to this rate. A man pays his service charge and then there is nothing to induce him to take an increased amount of energy. Whether he takes more or less he pays 4 cents per kilowatt hour for it. It is to introduce an inducing feature, and also to approach more nearly the cost of service, that we suggest

below the introduction of a secondary rate of 2 cents per kilowatt hour."

You see Mr. McClellan's rate was 4 cents per kilowatt hour and a \$1 service charge. He reports finally for approval 75 cents per month per meter installed, which is a service charge of not only 75 cents per wire but 75 cents per meter installed, which would be a charge upon every occupant of a building where there were more than one tenant, although there was only one wire. He increases the original 35 kilowatt hours to 5 cents from 4, and gives a reduction subsequently to 2 cents. I will state that the Electric Light Company will not show that its average consumer will use 35 kilowatt hours per month. So they are almost absolutely safe on a 2 cent proposition in residences.

Mr. Thompson.— That is true, of course. Comparatively few use that much.

Mr. Smith.— Yes, very few. And in connection with this, and on the paper of the Public Service Commission, and five days later, by its date, Mr. Roy H. Ernest, corporation counsel of the city of Lockport, in this case pending before us, receives the following letter:

"Mr. Roy H. Ernest,  
Corporation Counsel,  
Lockport, N. Y.,

Dear Sir:

I have before me the letter of Mr. McClellan to you under date of September 22, 1915, relative to proposed electric rates in the city of Lockport.

The engineers of the Commission have been in consultation with Mr. McClellan representing the city and with the engineers of the Lockport Company for the purpose of endeavoring to arrive at a solution of the problem in Lockport relative to rates. It seems to us as though the schedule submitted in the letter of Mr. McClellan is reasonable to both parties. We would like to be advised if the city will agree upon this schedule of rates as proposed. If this is not done, it will, of course, be necessary for the Commission to pre-

pare a schedule for electric rates for the city of Lockport which it shall determine is equitable and just. It would, of course, be more satisfactory if such a schedule could be agreed upon between the parties and there seems to be no good reason why this can not be done. If, however, you advise us that this can not be accomplished, we will endeavor to dispose of the matter in the alternative way suggested. We will appreciate it if the matter can be decided promptly so the case may be disposed of by the Commission.

Very truly yours,

.....

Commissioner.

JOC—K.”

And two days later, on September 29th, and in the same case, there is a letter, I presume on the official paper of the city of Lockport —

Witness.— I guess on my paper from my office.

Mr. Smith.— That letter is as follows:

“ Hon. James O. Carr,  
Public Service Commissioner,  
Albany, N. Y.,

Dear Sir:

I have your letter of the 27th inst., relative to electric rates in this city.

In answer thereto permit me to say that some time ago the members of the Common Council and the representatives of the petitioning Company made an effort to reach an agreement as to a schedule of rates for electricity and that such efforts were unsuccessful; that it was then understood that the whole matter was to be presented to the Public Service Commission for determination, which has been done.

The city has employed in this matter Mr. McClellan, an expert of much experience and ability, and relies upon his judgment as to what suggestions should be made to the

Commission concerning changes, if any, in the present rates for electricity.

Futhermore, the members of the Common Council have explicit faith and confidence in your Commission, and are firmly convinced that any final determination which shall be made in this matter and schedule of rates which shall be ordered by the Commission to be put into effect, and which we will be compelled to accept, will do justice to the people of the City of Lockport.

Thanking you for the courteous treatment which you have already extended to us, I remain,

Yours very truly,

ROY H. ERNEST,  
Corporation Counsel.

E—B ”

And on the paper of the Public Service Commission, Albany, dated September 30, 1915, in the same case, is the following letter :

“Albany, September 30, 1915.

Mr. Roy H. Ernest,  
Corporation Counsel,  
Lockport, N. Y. :

Dear Mr. Ernest :

I am very much obliged to you for your letter of the 29th relative to the schedule of rates in the city of Lockport.

In view of all the circumstances and of the fact that the engineers of all parties are practically agreed upon the schedule, it would seem as though the Commission could properly make an order putting such a schedule into effect. I will endeavor to have this done within the next few days.

Very truly yours,

Commissioner.

JOC—K.”

I wish to call the Chairman's attention particularly to the proposition that this set of rates is put into effect, as per the



letter of James O. Carr, commissioner, as a result of all of the circumstances, as he states it, and that the engineers of all parties have agreed upon the schedule. There were only two parties, outside of the Commission. The Commission must have considered itself a party to the transaction.

WILLIAM A. DICKENSON, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Mr. Thompson.—Did the Commission agree as to whether this company had capitalized its franchise? I think it has.

Mr. Smith.—Mr. McClellan objected —

Mr. Thompson.—I don't know where they get the rate that is in that opinion, but the opinion says that their income from the electric department is \$152,639.18; from their report it appears to be \$152,731.04; and the operating expenses \$326,000 by the —

Mr. Smith.—Yes; that is because the Commission saw fit to allow them expenses on their income until he rendered his decision.

Mr. Thompson.—He allowed depreciation of three per cent on property. This company gets \$15,000 on electric, \$17,000 on gas and \$31,000 on steam, in 1912. The net income amounts to over \$700,000. They take out interest on some loans that they have borrowed from themselves. It looks as if their capitalization, that they were feeling so sorry for, instead of being about \$700,000 is really about a million and a half.

Mr. Federspiel.—They asked to try to earn on a million and a half.

Mr. Smith.—These other items include, as I believe, the value of the franchise.

Mr. Thompson.—The petition for this rate calls attention to it — that is, to the franchise.

Mr. Smith.—Yes, to the franchise.

Mr. Thompson.—They asked, in the original petition, a return upon their franchise, and also as a going concern.

Mr. Ernest.—I don't think they allowed on that. I can tell if I have time to look it up.

Mr. Thompson.—They are figuring the rate on it here.

Mr. Smith.—In discussing this matter with you, Mr. McClellan indicated the great difficulty in allocating the Elm street plant to the uses of electricity and steam?

Mr. Ernest.—Yes, sir.

Mr. Smith.—Did he call your attention to any report made to the Public Service Commission in case No. 74?

Mr. Ernest.—He did not.

Mr. Smith.—I wish to call the Committee's attention to the fact that in the files turned over to us, in relation to this particular proceeding, there appeared, in a separate envelope, two reports in case No. 74, and which reports are both marked "financial," being duplicate reports on the apparent adjustment made by one H. H. Crowell, apparently an employee of the Commission, and is in relation to the application of the Economy Light, Fuel & Power Company for right to sell its franchise to the Lockport Light, Heat & Power Company. The total of this company is \$291,579.39, exclusive of good will. The gross receipts of this company are about \$47,000, divided into \$30,000 for steam and \$17,000 for electricity. Their electric load is equivalent to about 7,000 sixteen candle-power lamps. Therefore, for this physical property, valued at \$291,579.39, plus good will and franchises, the Lockport Light, Heat & Power Company proposes to pay \$250,000 in 5 per cent thirty-year gold bonds and \$130,000 of the par value of its capital stock.

Mr. Thompson.—They paid \$380,000 for the steam plant?

Mr. Smith.—Yes, in the division.

Mr. Thompson.—That is, at the time they consolidated?

Mr. Smith.—Yes.

Mr. Thompson.—How much did their property go in for?

Mr. Smith.—Three hundred and fifty thousand dollars.

Mr. Thompson.—Gas and electric both?

Mr. Smith.—No, steam alone.

Mr. Thompson.—One is the gas and electric, and the other was the steam?

Mr. Smith.—Yes.

Mr. Thompson.—All they had was \$700,000?

Mr. Smith.—Yes, at that time in 1907. The special value of this financial report at this time is showing that out of \$291,578.39 \$120,536.86 is the steam distribution system, consisting of steam mains, steam traps, steam meters for handling underground heating systems; \$120,000 and more was for mains in the street, absolutely impossible of any use of electricity in any way. The steam plant, consisting of 1,700 horsepower of water tube boilers with Murphy stokers, Green economizers, high pressure piping and fittings, three pumps, elevator, coal crusher, conveying machinery, purifying system, scales, elevator, etc., was priced at \$45,200. And that made \$165,000 and over of the total; to which would have to be added the valuation of the lands and buildings which had a total of \$45,000 and architect's fees of \$4,000, which would be practically \$50,000; and 40 per cent of that would be \$20,000; or, about \$190,000 of the \$291,000 was financially reported to the Commission in 1907 as steam operation, and was absolutely reversed in 1909 and 1910 in the report of the Lockport Light, Heat & Power Company. The greater portion of it was charged up to electric operation and was accepted by Mr. McClellan as such, all of which imposed a charge on electric operation in the city of Lockport.

Mr. Thompson.—The report of 1912 shows that they are earning on a capitalization of one million dollars, and have \$40,000 in bonds and mortgages, and a further capitalization of \$123,600 of demand noted to the United Gas & Electric Corporation, and that has got to be paid before they get to earning on their capital stock. Did you notice that in their annual report? It appears

that they owed at that time \$357,000, and \$50,000 of bonds, and the United Gas & Electric Corporation paid themselves interest at 6 per cent. Paid interest on bonds at 5 per cent and got a capitalization besides that of \$900,000.

Mr. Smith.—I wish to offer in evidence pages 41 to 43 of a pamphlet issued by Bertron, Griscom & Jenks, of New York, Philadelphia and Paris, dealers in securities, for 1912, which has securities of the Lockport Light, Heat & Power Company. Apparently they are making a report on it, which report says it is controlled by the United Gas & Electric Company, and that it was incorporated May 31st, 1907, under the laws of the State of New York; the business controls, without competition, the entire gas, electric light and power and steam-heating business of the city of Lockport, New York; franchises granted November 20th, 1905, for 100 years; population served 18,000; capital stock authorized, \$600,000; outstanding, \$150,000; has bonds of the Lockport Gas & Electric Company, first mortgage 5 per cent bonds, due February 1st, 1920, \$300,000; and has bonds of Lockport Light, Heat & Power Company, first refunding 5 per cent bonds, due January 1st, 1938, \$750,000; authorized, \$409,000; shows its gross earnings in round numbers, for 1907, \$110,000; for 1908, \$178,000; for 1909, \$203,000; for 1910, \$228,000; for 1911, \$242,000; and shows its net earnings, in 1907, \$35,000, and in 1911, \$58,000; in 1907 it had fixed charges of \$17,000, and in 1911 of \$37,000; the result being that its increased earnings in 1908 were \$18,000, and in 1911, \$20,000. Dividends have been paid regularly at the rate of 10 per cent since organization. Proportion of electricity sold for lighting, 30 per cent; proportion of electricity sold for power, 70 per cent; price of electricity for lighting, 7½ cents to 4½ cents net; price of electricity for power, retail, 1½ cents to ½ cent per kilowatt hour net, and wholesale, \$22 to \$18 per kilowatt hour per year net. Municipal contracts, \$55 per year per arc. Officers—S. J. Dill, president; George Bullock, vice-president; Henry Morgan, secretary and treasurer, New York; C. M. Kaltwasser, general manager, Lockport.

Mr. Thompson.—That is issued for credit purposes, I assume.

Mr. Moss.—The address of those New York offices for 1912 is 40 Wall street, New York. That must be Dill's office.

WILLIAM A. DICKENSON (examination continued):

Direct-examination by Mr. Smith:

Q. What is your business, Mr. Dickenson? A. Insurance.

Q. How long have you been in that business? A. Thirteen years.

Q. Located where? A. Savings Bank building, Lockport.

Q. All of that time in that business in the city of Lockport? A. Yes, sir.

Q. How long had you resided in Lockport prior to engaging in that business? A. Four years.

Q. What position did you occupy in 1913, with reference to the business of the city of Lockport? A. Secretary of the Lockport board of trade.

Q. How long had you been secretary? A. Ten years.

Q. During the year 1913 there was a rumor or statement of some kind in the city of Lockport that the Lockport Light, Heat & Power Company intended to make an application to increase its rates? A. Yes, there was a movement to that effect; I had heard about it.

Q. As a matter of fact that movement, as you call it, went right to the board of trade? A. Yes.

Q. On the proposition as to whether or not the board of trade was going to be agreeable on such an application? A. Yes.

Q. For the purpose of establishing the fact as to whether or not the board of trade was going to be favorable to that change of rates, the then manager of the company came before the board of trade? A. Yes.

Q. Who was the manager? A. Mr. Kaltwasser.

Q. You heard what he said? A. Yes, sir.

Q. As secretary of the board of trade you made a record of it? A. Yes, sir.

Q. You have it here? A. Yes, sir.

Q. Will you read it, please? A. Yes, sir.

Q. What is this statement that you are going to read from? A. Minutes of the directors' meeting of the board of trade for June 18th, 1913.

Q. Who are present? A. W. Harrison Upson, Mr. A. J. Laux, Judge Charles Hickey, Mr. George Lennon and myself.

Q. With reference to the business of the concern, not relating to this proposition, will you read from those minutes what was said by Mr. Kaltwasser on this subject?

A. "General Manager C. M. Kaltwasser of the Lockport Light, Heat & Power Co., was present by invitation and explained to the Directors the proposed revision of the electric light and power rates and of the proposed hearing before the Public Service Commission relative thereto. Mr. Kaltwasser explained that the change in rates would mean an increase of cost to the small consumer to whom the company was furnishing electric current at a loss and a reduction to the large consumers who were paying for the above-mentioned losses. Mr. Kaltwasser advised the committee that he would submit complete information regarding the matter as soon as it is compiled and would like to have us acquaint ourselves with the details and be present at the proposed Public Service Commission hearing."

Q. Is there any other record of the fact of that conversation?

A. Yes, in the minutes of the board of trade meeting.

Q. Will you read from that? A. This is the report that I made.

Q. Yes, but it is corroborative of this statement[ A. Oh, yes.

Q. What are you reading from now[ A. Minutes of the Lockport board of trade of July 9th, 1913.

Q. Reading a report made by you to the association on this subject? A. Yes.

Q. Read it. A. Under the head of reports of officers, there appears:

"Secretary Dickenson reported of the Board of Directors holding three meetings since the last meeting of the Board of Trade, at which the matter of the revision of electric light and power rates are proposed by the Lockport Light, Heat & Power Company was taken up with Manager C. M. Kaltwasser, who explained to the Directors that under the

present system the company is furnishing electric light and power to very small consumers for as low as twenty-five cents per month, which means a loss to the power company, which must be paid for by the larger consumers. In other words, the proposed revision would mean an increase in the cost of electric power to the small consumer and a decrease to the large consumer. Mr. Kaltwasser also informed the directors that they were making up a very comprehensive report of local conditions as regards light and power, and that a copy of same would be furnished to the Board of Trade as soon as completed."

Q. Is that all on that subject? A. There is some reference to the matter of electric power at \$16 being taken up with him.

Q. Don't want that. Now, Mr. Dickenson, how did this matter originate so that an investigation would be extended to Mr. Kaltwasser by the board of trade on this matter? If the board of trade originated this revision of rates, I want to know it. A. Mr. Kaltwasser spoke to me personally about it, asking if he could come before the directors, and I took it upon myself to say that we would be glad to have him come.

Q. How long was that before he actually appeared? A. I think it was the same week.

Q. How long were you officially connected with the board of trade, or its successors or consolidations, as secretary? A. After this?

Q. After this matter was presented by Mr. Kaltwasser? A. Till June 1st, 1916.

Q. As secretary of the association or as a member of it in any way, have you had any comprehensive statement submitted to Mr. Kaltwasser? A. No, sir.

Q. Nothing presented to the board of trade? A. No, sir.

Q. Has not kept or agreed with that promise? A. No, sir.

Q. Did the board of trade receive a copy of the petition or copy of the notice of the hearings, do you know, in this application? A. Not to my knowledge, as to the hearings held in 1915.

Q. That is all, thank you.

CHARLES E. DICKINSON, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. What is your full name, Mr. Dickinson? A. Charles E. Dickinson.

Q. What is your address?

Mr. Thompson.—Section 69 of the Public Service Law provides this:

“The commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount actually paid to the state or to any political division thereof as the consideration for the grant of such franchise or right.”

A. 24 Ashley Building.

Q. How long have you been a resident of the city of Lockport?

A. Since 1894.

Q. Do you recognize the expression Beverly contract in connection with the Lockport Light, Heat & Power Company? A. I have seen it referred to, but it is not a Beverly contract, it is a Dickinson——

Q. The contract is a Dickinson contract proper? A. The so-called Beverly contract is a contract made by me.

Q. I ask you if you recognize the Beverly contract? A. If you refer to the Dickinson contract, yes.

Q. As a matter of fact the Beverly contract is a contract made between you and the Lockport Light, Heat & Power Company in 1901? A. Yes.

Q. What does that cover? A. A maximum of 500 horse-power.

Q. A minimum of what? A. Two hundred at first, and then amended to 275.

Q. When amended? A. In 1903.

Q. Prior to 1903 it was 200? A. Yes, 200 horse-power.

Q. At what price per horse-power? A. Twenty dollars.

Q. For what number of hours? A. Twenty-four-hour service.



Q. Under the original contract was the power continuous, 365-day power? A. Yes, it was; subject to the rights of the State of New York.

Q. Which rights included what? A. Rights to shut off the water for the purposes of the State.

Q. What purposes might those be? A. Repairs to the canal.

Q. Particularly for repairs in the spring? A. Yes.

Q. This power that you speak of is hydraulic power only? A. Yes. That price, I think —

Q. Let me carry out my thought, please, and then you can make any statement you want to. Was there any provision in that contract to cover the contingency of State appropriation temporarily or during those two months in the spring? A. The steam plant was installed in the electric building.

Q. So that the steam plant called for in the Beverly contract exists in the electric building? A. It does.

Q. What is its power? A. Five hundred horse-power.

Q. Is it in use? A. It has been used.

Q. Is it sufficiently large? A. It has been sufficient.

Q. Under the contract it is obliged to be kept in repair? A. I believe so.

Q. So that it can be made efficient under the terms, for the purpose for which it was intended? A. Yes.

Q. That is, supplying power in place of the 500 horse-power under this Beverly contract? A. Yes, sir.

Q. How long does that Beverly contract last? A. Twenty years.

Q. From what time? A. 1901; and the amendment from 1903 for twenty years.

Q. Is there option of renewal? A. Yes.

Q. For what time? A. Twenty years.

Q. The person who is buying that power has the privilege of using it for forty years from 1903? A. Yes.

Q. Under any restrictions? A. Under the conditions stated in the contract.

Q. Which are what — except the payment of twenty dollars? A. The twenty dollars included the use of the building as a part of the plant.

Q. You have said it now. Go right along. So the power didn't cost actually twenty dollars? A. They paid twenty dollars for the power.

Q. Plus the steam plant? A. Plus the steam plant.

Q. Figured as a separate item, what would be a proper charge for the steam plant under this contract? A. I have not figured that in that way.

Q. What is the building worth a year? A. The floors above rent for \$700 each.

Q. How many floors above are there? A. Three.

Q. \$2,100 then, is the floor rent for the floors above for ordinary use? A. Yes.

Q. Do they rent above this operating floor? A. No; the operating floor and all below that.

Q. What, in your judgment, would all of the floor rental value be? A. A thousand dollars, about; not more.

Q. Independent of its water power use? A. Yes.

Q. Tell us what the burdens are, other than that? A. There are no other burdens.

Q. So that it stands as an existing proposition; and at the option of the Lockport Light, Heat & Power Company, which is now the owner of the Beverly contract, that there is now in existence in the city of Lockport a plant in which the Lockport Light, Heat & Power Company have a privilege of using 500 hydraulic horse-power at a cost for the power of eighteen dollars per horse-power? A. About that.

Q. And in which there is an emergency steam plant capable of taking the place of the maximum capacity of the plant for emergency purposes, to be maintained under the terms of the contract by the Lockport Light, Heat & Power Company, and that that contract continues for a period of forty years from 1903? A. Yes, if renewed.

Q. If they want to renew it; and that that contract and the privilege of that power has no burden increasing its cost above what I have stated? A. That is true.

By Mr. Thompson:

Q. This Beverly contract — is that the one that covers the water power that is used to cover the peak? A. Yes, if they use it that way.

Q. Is there sufficient for all ordinary business purposes? A. I would not be prepared to say that that would cover the peak.

Mr. Smith.— That would make it a thousand, by the use of steam.

Mr. Thompson.— They have a steam plant, and ——

Mr. Smith.— They have a steam plant as an auxiliary to their water plant. Steam for power purposes, not for heat. They have a steam auxiliary which, in the event of emergency, will take the place of the 500 water, and by the use of the 500 steam besides the 500 water, they can for ten months in the year carry the peak load of 1,000 horse-power, without the expense of buildings, apparatus, and so on.

Mr. Smith, resuming:

Q. I will ask you this question — you were industrial agent? A. I was.

Q. You know the industrial conditions of Lockport, do you not? A. Generally.

Q. You know the steam plant on Elm street in the city of Lockport? A. I do.

Q. You know when the Economy Light, Fuel & Power Company was organized? A. Yes.

Q. You remember when it established an electric light plant up there? A. Yes.

Q. And you know the Lockport Light, Heat & Power Company did establish a steam plant somewhere else? A. They used this one in the electric building.

Q. And then, you remember, there came a time when they forgot to quarrel, and went before the Public Service Commission for permission to join forces? A. I understand so.

Q. You understand enough about electric operation to know that there may be times when a peak is required to be carried.

Now, this electric building can furnish 500 horse-power, and has, or should have, a 500 horse-power auxiliary steam plant; so that, when equipped, under the terms of the contract, it has a maximum capacity of a thousand horse-power? A. It has.

Q. And if the peak required was not to exceed a thousand horse-power the electric building operation could take care of it? A. Yes, sir.

Q. The report of Mr. McClellan, the expert employed by the city of Lockport, says that when originally installed the Elm street plant was installed for both electric and steam purposes? A. I don't understand that it was.

Q. Don't you know, as a matter of fact? A. Yes, that it was only a steam plant.

Q. Has there been any development up there of their property since 1906, since the Economy Light, Fuel & Power Company was merged? A. No, there has not.

Q. Has there been any great increase in the number of buildings for the purposes of using the old steam company plant as the Economy Company, for the purpose of light operation? A. No.

Q. The mains of the Economy Light, Fuel & Power Company extend about two blocks down through the streets? A. I think further than that.

Q. Where? A. To the big bridge on Main street.

Q. And where else? A. To the Exchange street bridge on Market street.

Q. Did they go down Market street? A. Oh, no, I guess not; not down Market street, the conduits didn't.

Q. And correspondingly, the Lockport Light, Heat & Power Company put their steam mains through a couple of blocks in the city? A. Yes.

Q. The Steam Company put their electrical conduits how far? A. Only a few blocks.

Q. Those were practically duplications of systems? A. Yes, of electricity.

Q. And to the extent of the installation of the Lockport Light, Heat & Power Company, of steam also? A. Yes.

Q. How long did the Economy Company exist before the consolidation so called, as a business operation, do you know? A. I do not.

Q. Not much more than a year or a year and a half? A. I don't know; don't have it in mind.

Q. What would your idea be? A. Not more than two or three years.

Q. The number of its electric customers was small? A. As compared with the other, yes.

Q. And the steam customers of the Gas and Electric Light Company was very small number? A. Yes.

MORTIMER A. FEDERSPIEL, recalled:

Examination continued by Mr. Smith:

Q. Did you ever have a talk with Mr. Kaltwasser as to whether or not the proposed revision was going to be an increase to the large consumers? A. I did. Had a talk with him at Albany, about July 1, 1914. I asked him if the rate would affect the Lockport Ice & Cold Storage Company, and he said then that the effect of the revision would be downward; he said the rates on small consumers would be increased.

Q. Anywhere else? A. Here in this office.

Q. When? A. Before we went to Albany and afterwards.

Q. What did he say? A. He said that the effect of their proposed revision would be downward to large consumers.

Q. Were all of these conversations initiated by you or by him? A. I think most of them by me because I was interested in the Lockport Ice & Cold Storage Company.

By Mr. Thompson:

Q. Who takes the credit for having employed this Mr. McClellan? A. I employed him — if there was any credit to it.

Q. How did you happen to do that?

Mr. Smith.— He went through that before.

Mr. Thompson.— Oh, all right; never mind.

SHELDON N. COOK, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. How long have you resided in the city of Lockport, Mr. Cook? A. About fifty years.

Q. You reside where? A. Orchard street.

Q. What is your business? A. Manufacturer.

Q. Located in the city of Lockport? A. Yes, sir.

Q. How long in your present line of business? A. About sixteen years.

Q. You are a user of electric power? A. I am.

Q. You use electricity for power purposes? A. Yes, sir.

Q. How long have you used electricity? A. I think about fourteen years.

Q. Do you recollect when the agitation started as to the revision of rates? A. I do.

Q. Did you have any conversations with anybody? A. I did.

Q. Whom with and when? A. With the electric man, Mr. Haley; he was in my office and I asked him how the revision would affect us and he said that it was to raise the prices for consumers of 25, 30 or 35 cents worth of electricity a month. I asked him how it would affect my bills and he said it would make them less.

Senator Lawson.—Did you believe that?

A. I did.

Q. Did you believe that a corporation was going to revise its rates to such an extent as to furnish you with cheaper electricity than you had been getting? Did you really believe that?

Mr. Thompson.—I don't want you to make any such insinuation as that.

A. I did believe it when he told me.

By Mr. Smith:

Q. Have you got any better evidence of the facts now? A. I should say I have.

Q. Have you got it with you? A. Yes.

Q. Show it to us. A. My bills. Under the old line of prices there is a bill where there was 570 kilowatt of horse-power, but that bill was for \$10.80. Under the new line, there's 530, forty kilowatt less, and the bill is for \$30.30, or three times as much. That is all.

Q. You have two instances, have you not? A. Yes.

Q. Read the other. A. Here is another one where the bill is \$44.25 for 2,750 kilowatt horse-power, and under the new bill 2,698, which would be considerably less power, was \$51.98, an increase of about fifteen per cent. That is my experience.

Q. What month is this bill representing the fifteen per cent increase? A. That is last October. Here is a bill back in 1912, that was picked out because it was the nearest bill to the quantity of electricity used, and I —

Mr. Lawson.—That is the effect of New York City people getting after your corporation.

A. Yes; these \$5 cigars on Broadway that they're smoking; and us poor farmers up here paying for them. We can't smoke them; if we could it would be all right, but we can't.

By Mr. Smith:

Q. What is your demand in horse-power? What is your capacity? A. We are using twenty horse-power.

Q. That was not quite the inquiry. What is the capacity of your motor? A. Twenty-five horse-power.

Q. Are you charged, under this demand rate, for twenty or twenty-five? A. Twenty. They started to charge twenty-five, and I challenged them to put all of the twenty-five on.

Q. Did they make a test? A. Yes.

Q. Of what duration — long enough to be practical? A. Three or four minutes.

Mr. Thompson.—They charge you \$13.25 and \$15.50 anyway. That is what you pay for your chair. After that they charge you a cent a kilowatt. The more you use, the less, proportionately, there seems to be. There is a very good illustration of electric light rates as they exist to-day. Electric light rates were arranged originally for lighting. Of course that made the peak of the load; that is the time of the greatest demand; but the development of motors has made it now so that the larger use of power is day power, evening power and driving power, and still they will charge one cent per kilowatt for power purposes as against eight or nine cents for lighting purposes, leaving the old condition on. One cent per kilowatt horse-power makes \$59 —

about that — per horse-power. They say they have a charge here as low as \$22 or \$18 per hour — a discrepancy between the power rate at \$22 or \$24 per horse-power and the kilowatt horse-power, makes a discrepancy of three or four hundred dollars. A discrepancy of cost against the poor people. I think the time will come when they will have to face the situation and charge more for the wholesale and less for the retail. The fellow who has a small demand has to pay a big charge on those bills whether he uses any or not.

Witness.— If we have got to pay our capacity, let us pay for it at the rate at which they get it, and not at the rate of a hundred dollars.

Mr. Smith.— Do you mean to say they measure the capacity of your mill, or your use?

A. The capacity of the mill.

Mr. Thompson.— It is the result of precedent really. They don't realize the discrepancy between the small user and the larger user. When you get up into the large users it doesn't seem so great.

Witness.— I have a twenty horse-power capacity on either side, and if we had not put up a kick on this thing my capacity would have been figured on the capacity of both of my motors and would have been sixty instead of twenty. But they let me down a little carefully on this because they saw some fight. Other people are treated harder. Sometimes one man may be picked out as a hard kicker, and they will then make some difference for him.

Mr. Moss.— Is that discrimination right?

Mr. Lawson.— Contrary to law.

Witness.— If I had kept quiet, it would have been on the basis of sixty.

Mr. Smith.— Not your mill use, but your capacity.

A. Yes. We can't run but one-half of our mill at a time, and you can't figure a maximum except by putting one-half of my plant on there, and the capacity of my motors is 30 horse-power;



but if my whole mill is only 19 you can't charge me with that; it must be the whole.

Mr. Smith.—The Lockport Light, Heat & Power Company, if a man wanted 3 horse-power, they would say to him to put in a 10 horse-power or 5 horse-power motor; under this demand rate they would say that he has a 10 horse-power capacity and so must pay our demand rate for that.

Mr. Lawson.—And even a 25 horse-power motor to overcome resistance, I suppose.

Mr. Smith.—Absolutely.

Mr. Thompson.—It is fair to have a minimum charge.

Witness.—But charge us at the rate of \$18 and not \$70.

Mr. Thompson.—Now, in Middleport. Why, down there the people get a 40-cent per month minimum charge on residence service and an 8-cent rate; and 50 cents a horse-power, minimum charge on a motor; and they will sell you power for a cent and give you 10 per cent discount. And down there they're paying a dividend of 6 per cent.

JOSEPH A. TURNER, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. You are a resident of the city of Lockport, Mr. Turner?  
A. Yes, sir.

Q. And what is your business? A. Box and lumber.

Q. Where located? A. Just below the New York Central depot.

Q. In the city of Lockport? A. Yes.

Q. How long have you been conducting that business? A. Since 1901.

Q. How long have you lived in the city of Lockport? A. Born here.

Q. Do you hold any official position in the city or county government at this time? A. Supervisor of the Fifth Ward of the city of Lockport.

Q. In the manufacture, in the box and lumber business, do you use electricity for power purposes? A. I do.

Q. How long have you been using electricity? A. Since 1909.

Q. What is your demand load, measured by the capacity of your motor or motors? A. I have twin 20 horse-power motors and I discontinued one about a year ago.

Q. It is absolutely discontinued? A. It is.

Q. Could it be connected readily? A. It could have been; but then they were going to charge me for that if I left it in the mill, so I took it out.

Q. When did you take it out? A. Just prior to the time they raised the rates; they had it listed and I had them come down, and proved to them that it was outside the mill.

Q. You knew of the rumor or statement made in the community in 1913 that there was an application to be made for right to increase? A. Yes, sir.

Q. Did you have any conversation with any officers of the company as to that? A. No.

Q. Did you hear any statements made by them? A. I don't recall any officer of the company making any statement to me.

Q. You interested yourself to the extent of trying to find out to what extent the increase would interest you? A. Yes.

Q. Where did you seek your information? A. I believe it was discussed in the board of commerce and with the business men in general.

Q. At that time there was the board of trade and the board of commerce? A. Yes, sir.

Q. You were a member of the chamber of commerce? A. Yes, sir.

Q. What was your understanding as to the effect on users of power in quantities, of this raise in rates? A. My general impression was that consumers of power of upwards of 3 or 4 horse-power would be, if anything, reduced, if they were using it continuously; but if only at intervals it would be increased.

Q. Have you got any evidence or knowledge of the effect of the increase on the city of Lockport? A. I have information from my bills and from other sources.

Q. Tell us what information you have. A. My bill for the last month under the old rates, a year ago, was \$22 and a little over, and my bill for last month, this year, was \$46 and something.

Q. What discount on the new rate? A. Twenty-five cents per horse-power. The new rate fixes a service charge of estimated average use. My service charge before the increase runs from six to nine dollars, and under the new charge the service charge is \$30.25 whether I run or not.

Senator Lawson.—Service charge?

A. Estimated maximum that I would use.

Senator Lawson.—You pay whether you operate or not?

A. I had several talks with Wallowen, and he stated to me that the bill would be figured on the peak load, and if the peak load was less than the bill, estimated on my use for any three continuous minutes, I would be charged after that by the peak load. The charge for motors of my size was \$1.75 for the first five and \$1.50 for the next eleven. And I protested and he came down there with a meter of some kind, and then the next month he cut my maximum down to two horse-power.

Mr. Smith:

Q. He cut your service charge? A. Yes; reduced it to \$3.

Q. Did you reduce your motor? A. No.

Q. He just arbitrarily reduced the charge? A. He sent me a rebate ticket.

Mr. Thompson.—Did you kick any more?

A. Yes; I am kicking yet.

Mr. Smith:

Q. Have you that rebate ticket? A. I looked for it to-day, but could not find it.

Q. There is considerable opposition among users, is there? A. There is an uproar.

Q. Was there any association of people formed? A. Yes, sir.

Q. What was that called? A. The Electric Consumers Association.

Q. You are a member? A. I am president.

Q. How many members are there? A. Seventy-five or eighty.

Q. Residence consumers? A. Some.

Q. Mostly power users? A. Yes, sir.

Q. Who is the secretary? A. William Ferris, Jr.

Q. Did you have any talk with Mr. Kaltwasser and did he tell you what effect it would have on your power? A. Somebody did, but I can't recall.

Q. What is your present impression on that proposition as to whether or not it was Mr. Kaltwasser that someone talked with? A. My recollection is not good, but I think someone talked with him — I don't know who.

Q. Your rates are larger than they were before? A. Yes; and then they reduced it some.

Q. To what do you attribute that? A. Because I am a good kicker.

Q. They are making overtures to several of the people of the association? A. Yes, I believe so.

WILLIAM J. FERRIS, JR., being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. What is your full name, Mr. Ferris? A. William J. Ferris, Jr.

Q. You reside in the city of Lockport? A. Yes, sir.

Q. At what address? A. Four hundred and twenty-seven Olcott street.

Q. And what is your business? A. Clerk at the Westerman Company's plant.

Q. Are you the William J. Ferris who is secretary of the Electric Consumers League? A. I am.

Q. Have you interested yourself in this matter of electricity? A. I have.

Q. To what extent? A. Since this organization was formed, to the extent of collecting the data as to new bills, and figuring the increase.

Q. Have you that data? A. Yes.

Q. Are you in a position to indicate it to the Committee for record? A. Yes.

Q. Have you gotten that in such shape that it can be read and intelligently understood? A. I think so.

Q. All right.

A. Maximum demand.	Name of consumer.	Month.	Net increase.	Consumption.	Old rate.
3.89 kwh.	Dinwoody McKee, Walnut St., power user....	Nov.-Dec.	\$6.50	59 kwh.	\$1.63
1.27 kwh.		Jan.	2.66	39 kwh.	1.34
1.16 kwh.		Feb.	2.65	40 kwh.	1.35

Q. Any change in the motor? A. No, none.

Mr. Thompson.— How much of a motor has he?

A. I don't think over 5 horse-power.

Maximum demand.	Name of consumer.	Month.	Net increase.	Consumption.	Old rate.
23 kwh.	Pettit & Co., power users....	Nov.	\$12.33	3390 kwh.	\$51.67
		Dec.	12.32	3430 kwh.	51.98
		Jan.	11.53	3710 kwh.	55.57
		Feb.	17.17	3670 kwh.	54.53
		Mar.	16.70	3730 kwh.	56.10

Mr. Thompson:

Q. How do they get at the demand? A. They take a watt meter to do that; the dial on a watt meter makes so many revolutions a minute and they take the revolutions of that dial for three minutes, and that is the basis of the computation.

Mr. Smith:

Q. Have you got percentage of increases in these cases, Mr. Ferris? A. I have not estimated that.

Mr. Smith.— I was going to suggest this possibility; if there are copies of the original data, and Mr. Ferris could turn them over to the stenographer, she can copy them. Will you do that?

A. Yes, sir.

Q. Are you personally a user of electricity? A. Yes, sir.

Q. Have you any residence cases? A. No; no residence cases.

(The data referred to in the foregoing testimony of Mr. Ferris was not furnished.)

IRA MCCOY, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. McCoy, you live in the city of Lockport? A. Yes, sir.

Q. Have you lived here all your life? A. Yes, sir.

Q. You are now an alderman? A. Yes, sir.

Q. And have been for how long? A. For eight years.

Q. You are a user of electricity? A. Yes, sir.

Q. You are a panel board user? A. Yes, sir.

Q. How long have you been a user? A. Two years.

Q. Will you please indicate to the Committee how that panel board use came about? A. The first I knew of it it was introduced to me by one of the employees of the Electric Light Company. He said they were installing many of them in the city; I looked at it, and considered it; it had a flatiron and a light and one plug for using for any other purpose. I had him put one in my house for five dollars.

Q. That panel board, when installed, permitted the use of an electric iron which the company sold to you, by the way? A. Yes, sir; with the board complete for five dollars.

Q. An electric iron, one light and a little extra plug for five dollars? A. Yes, sir.

Q. And you received your electricity for that use at a lighting rate? A. Yes, sir.

Q. And you installed one of those, among a number of others? A. Yes, sir.

Q. There were solicitors sent out through the city? A. Yes, sir.

Q. That solicitation for panel boards was made before any change in the rates? A. Yes, sir.

Q. Several hundred of these panel boards were installed? A. Two or three hundred, I think.

Q. There was no service charge connected with the service in the city of Lockport at that time? A. No, sir.

Q. You still had that board in operation when the new rates went into effect? A. Yes, sir.

Q. What happened then? A. Then I had to pay 75 cents a month.

Q. Which meant \$9 a year for having the panel board there? A. Yes, sir.

Q. Just for having it installed? A. Yes.

Mr. Thompson.—They didn't rent it to you? They sold it to you?

A. Yes; I think the provisions were that if we went out of the house they would make an allowance back.

Senator Lawson.— After you bought this panel board and electric iron, and the right to use the current you paid for under the new rates, they then charged you 75 cents for the right to use your own property?

A. Yes, sir; that's it.

Q. Under what right? A. The Public Service Commission gave them the right to charge this.

Mr. Thompson.— The same with the meters; the user owns the meter.

Mr. Smith:

Q. Can you go a little further? At or about the time the Lockport Light, Heat & Power Company began to instal these panel boards, it went pretty extensively into the hardware business, and began to instal anything that could be used with these panel boards, and has large quantities of stuff for sale? A. Yes, sir; I have ———

Q. What have you that you purchased to use with this panel board? A. I have a coffee percolator.

Q. How much did that cost you? A. Six or eight dollars.

Q. Purchased from the company? A. Yes, sir.

Q. What else did you buy? A. A vacuum cleaner.

Q. For how much? A. I think it was sixteen or eighteen dollars, and I got it for thirteen and a half.

Q. And unless you continue to pay this \$9 for the panel board, all of the apparatus that you bought from the Gas Company, after their solicitation that you put in this apparatus, becomes useless? A. Yes, sir; no good.

Q. Did you, as alderman, agree that expert McClellan should fix the rates? A. No, sir.

Q. Do you know whether or not the common council of the city of Lockport did grant him that authority? A. No, sir, they did not.

Senator Lawson.— I simply want to ask you if this man McClellan had the authority of the city authorities to get together with the Electric Light Company here?

A. No, he did not.

Mr. Thompson.—Mr. Ernest, when you got these letters from this expert did you read them?

Mr. Ernest.—Yes.

Mr. Smith.—You recall a complimentary reference to the Public Service Commission, expressing the city's confidence in the Public Service Commission and in McClellan's ability.

By Mr. Smith (to Mr. Ferris):

Q. Did you ever have a talk with Mr. Kaltwasser as to whether or not the new rates would affect large consumers? A. I did.

Q. When and where? A. Early in 1914.

Q. Where? A. Both were in the office of the Westerman Company on corner of Jackson and Gooding.

Q. What was said? A. It was as to reducing our bills. He said under the new rates our bills would be reduced; large consumers would be reduced and small consumers would be increased; I don't know whether he spoke particularly of the Westerman bills or not.

Senator Lawson.—Do you know whether he made that statement generally to consumers?

A. From information I have gained I believe he did.

WILLIAM H. HIGGS, being duly sworn, testified as follows:

Direct-examination by Mr. Smith:

Q. Mr. Higgs, you were a member of the International Power & Transportation Company of the city of Lockport when it was organized? A. I was.

Q. Did you hold any office? A. I was secretary.

Q. That company — will you permit me to go along with the history of it, and kindly correct me if I am wrong. That company was organized for the purpose of taking over, and did take over, the right to transmit, within the city and town of Lockport, some 20,000 horse-power from the Niagara, Lockport & Ontario Power Company; and at the rate of payment to the Niagara, Lockport & Ontario Power Company of \$16 per horse-power, and twenty-four-hour service; and the contract sets forth that, as a



part of the consideration, or that it was the abandonment of the rights of the Luther agreement and their subsequent amendments; that Luther agreement came from the facts that the Niagara, Lockport & Ontario Power Company was organized by certain of the then existing Business Men's Association of the City of Lockport; and in an effort to obtain a charter, which would be primarily for the use and benefit of the city of Lockport in the development of power from Niagara River. Now, when that International Power & Transmission Company was organized, did it actively go into business? A. No.

Q. What did it do with its rights? A. It built a line from the station to Witbeck's mill and furnished them with power, and that is all the power it furnished, outside of the Harrison foundry, that used about 2,000 horse-power.

Q. Is it still in existence? A. Yes, sir.

Q. Are you still a member? A. No, sir.

Q. Did the original membership retire at one time? A. Yes.

Q. By transfer of the stock? A. Yes.

Q. At one time, all at once? A. I assume all at one time.

Q. By the operation of some agent a primary arrangement was made for the transfer of the stock? A. Yes.

Q. And it was so transferred? A. Yes.

Q. To what organization or company? A. We supposed to the Simonds Company or some other company associated with them in New York City; we didn't know the Gas Company was purchasing it.

Q. Who was the agent? A. Mr. Ashley executed all of the transfers and I am inclined to think that Mr. Ashley thought the Simonds people were interested.

Q. That was at or about the time the Simonds Company came here? A. Yes.

Q. The representative of the Gas Company was anxious to get the Simonds right? A. Yes.

Q. And the International Power & Transmission Company, in the expectation that the Simonds Company was to receive the benefit from that company, made the transfer? A. Yes.

Q. What was the consideration of that transfer? A. I don't know. Each individual holder of stock transferred his own stock

for a price satisfactory to himself, and there was no record that ever appeared in the company of that sale.

Q. It is necessary, Mr. Higgs, that we have as much information as we can, and would be more necessary in view of the recently developed fact that it was the design to transfer to some one else so that its cost to the Gas Company and its right to derive benefit from it would be unknown; and any information which you may have on the general transfer would be most acceptable here. A. I have no knowledge as to what was paid by them for it.

Q. What proportion of it did you hold? A. I had one-tenth, and then one-third of one-tenth, plus some more; I bought Mr. King's stock; and it is so long ago that the exact amount has passed out of my mind.

Q. Were the books of the company transferred over? A. They were.

Q. Is it so long ago that you can't tell us what you got for ten shares, and one-third of one-tenth plus some more? A. It is; but I might have gotten a little bit more than some others, because I had built the line myself and run it all for four or five years.

Q. We will allocate that if you will tell us what you got? A. Five thousand dollars.

Q. From that 100 shares? A. No; the International Power & Transmission Company was first incorporated by a Niagara Falls concern and then, you remember, the law was changed so that you had to get the consent of the Public Service Commission to incorporate; so that in order to avoid that, we bought out the International Power & Transmission Company, which was a Niagara Falls concern, and paid them certain shares of stock for their company and we took it over.

Mr. Moss.—Did anybody get \$15,000 for his one-tenth on the sale?

A. No.

Mr. Smith:

Q. You had 13 per cent plus some more, and received \$5,000 for it all? A. Yes, sir.

Q. And that included your extra labor? A. Yes; that included all of it.

Q. How many shares were there? A. I think it was incorporated for 100,000 shares.

Q. When was it transferred over and got into the business of the Lockport Light, Heat & Power Company? A. When did the Simonds people move here?

Q. Was it at that time? A. Yes, about that time. I think in 1910.

Mr. Thompson.—Mr. Ferris has found a retail bill which he has just shown to me. The bill of J. C. Cochran. Under the old rate the November bill was \$1.05, and under the new rate, \$1.45; increase of 38 per cent; the January bill under the old rate was 38 cents, and under the new was \$1.40; in February, under the old rate, the bill was 82 cents, and under the new was \$1.30, an increase of 58½ per cent; on the March bill the difference was 45 cents, which was 50 per cent increase; in April, under the old rate, the charge was 50 cents, and under the new was \$1.25, and that's a 67 per cent increase; and in the month of May the increase was 92 per cent. That shows an average increase of 56 per cent for the months mentioned.

By Mr. Smith (resuming Higgs examination):

Q. Did you have any conversation with the representative of the Gas Company, Mr. Diall, on that proposition, that led you to believe it was going to the Simonds Company? A. No.

Q. Where did you get that impression then? A. From Mr. Ashley.

Mr. Thompson.—I want the public to understand that the Committee can only be here to-morrow; we must be in New York again on Monday morning. I hope that everybody who wants to be heard on this matter will come in and be heard, and, in any event, will not blame the Committee if they are not heard.

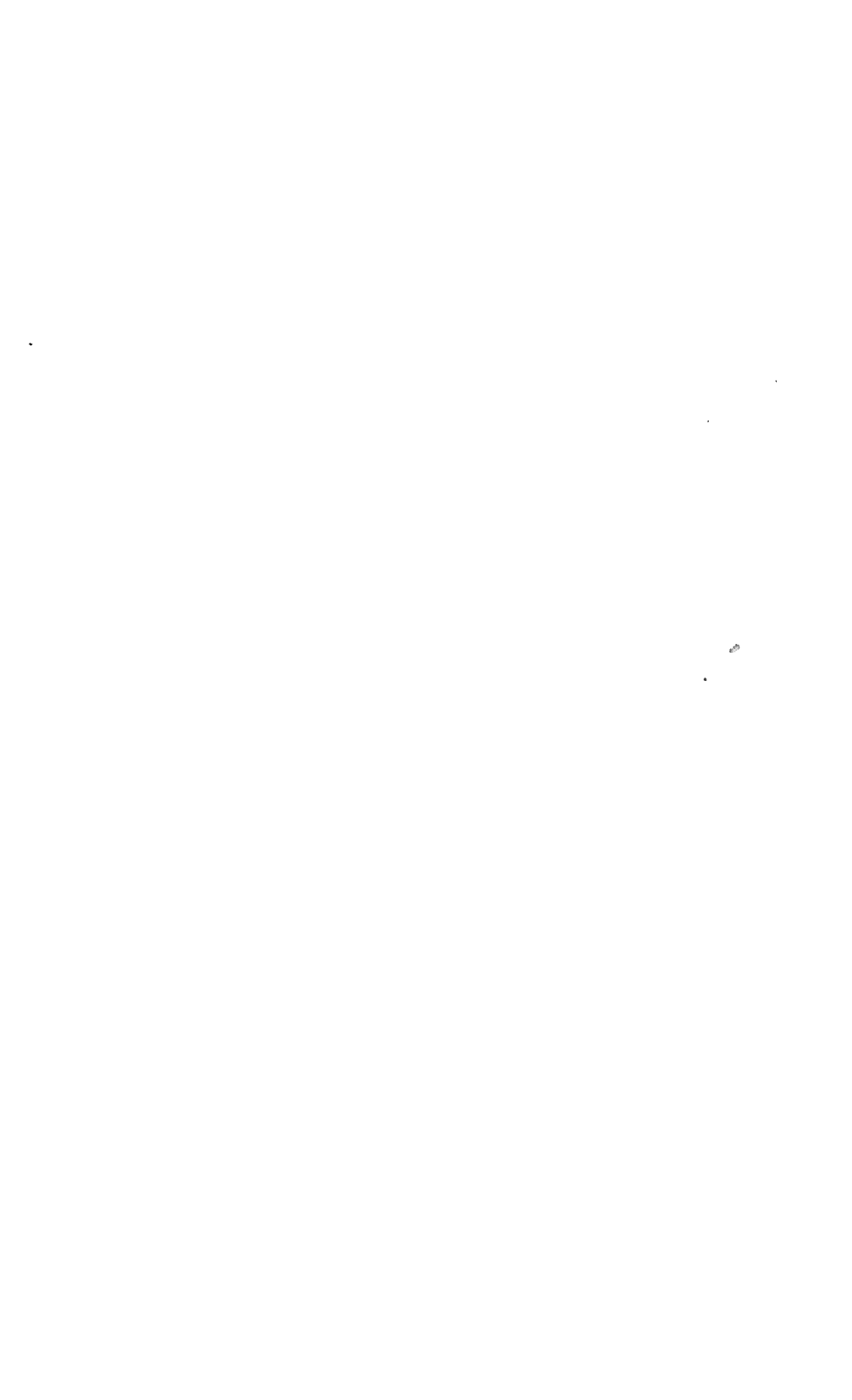
Mr. Smith.—Will the Chairman kindly direct people under subpoena to be here to-morrow morning at the adjourned time?

Mr. Thompson.—All those witnesses who have been subpoenaed will be here, please, at the adjourned time to-morrow morning. Now, there is not any need of the people being afraid to come up

and tell the circumstances here. The Gas Company is not a thing that will try — or can, if it does try — to hurt anybody. There need not anybody be afraid to come around and let us know what the facts are. I have reason to believe that the company itself would much rather have a rate that would be satisfactory to the people of the city, and am really inclined to think that you are going to get that corporation or the officers of the company with you.

This hearing stands adjourned till to-morrow morning at 10.30.

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